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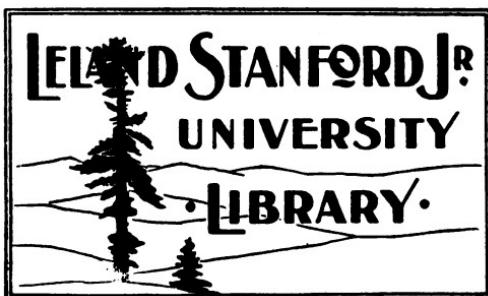
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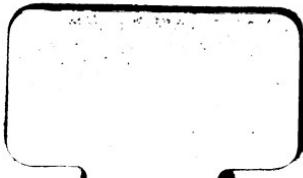
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F. D. Spencer

March 5th 1895



Presented by MRS FRANCIS E. SPENCER.



AMENDMENTS TO THE INCOME TAX LAW.

The recent amendments to the Income Tax law, which passed the Senate on Feb. 19, 1895, are as follows :—

Joint resolution extending from March first, eighteen hundred and ninety-five, to the fifteenth day of April, eighteen hundred and ninety-five, the time for making returns of income for the year eighteen hundred and ninety-four.

Resolved by the Senate and House of Representatives of the United States, of America in Congress assembled, That the time fixed by existing law for the rendering of income returns, to wit: "on or before the first Monday of March in every year" (Sect. 35, Act of August 28, 1894, and Sect. 3173, Revised Statutes, as amended by Sect. 34 of that Act) is hereby extended, with reference only to returns of income for the year 1894, so that it shall be lawful to make such returns for that year on or before April 15, 1895.

Resolved, That in computing incomes under said Act the amounts necessarily paid for fire insur-

THE INCOME TAX.

ance premiums and for ordinary repairs shall be deducted.

Resolved, That in computing incomes under said Act the amounts received as dividends upon the stock of any corporation, company, or association shall not be included in case such dividends are also liable to the tax of two per centum upon the net profits of said corporation, company, or association, although such tax may not have been actually paid by said corporation, company, or association at the time of making returns by the person, corporation, or association receiving such dividends. And returns or reports of the names and salaries of employees shall not be required from employers unless called for by the collector in order to verify the returns of employees.

Resolved, That no taxpayer shall be required in his, her, or its annual return under said Act to answer any interrogatories except as specifically provided in said Act.

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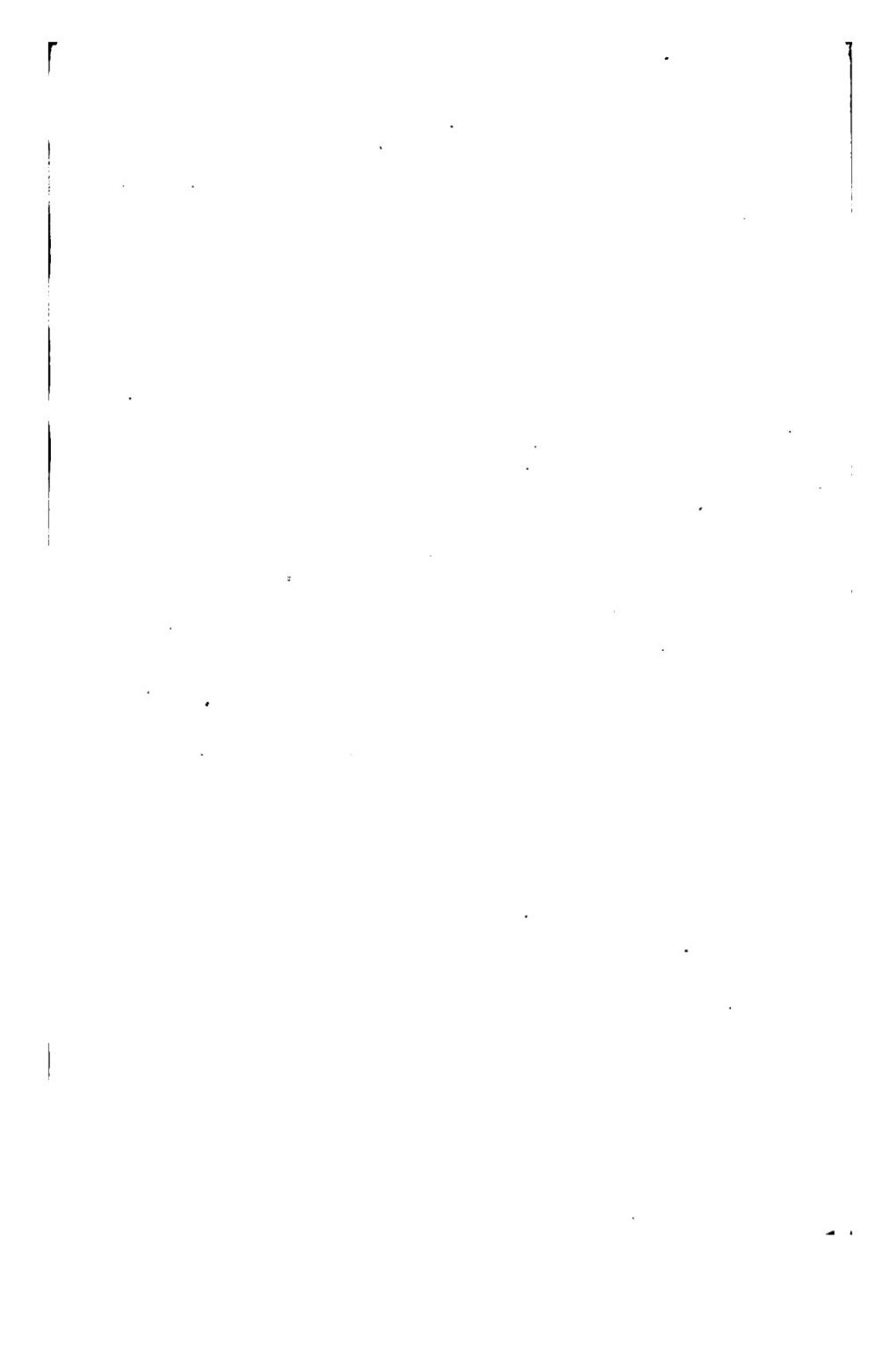
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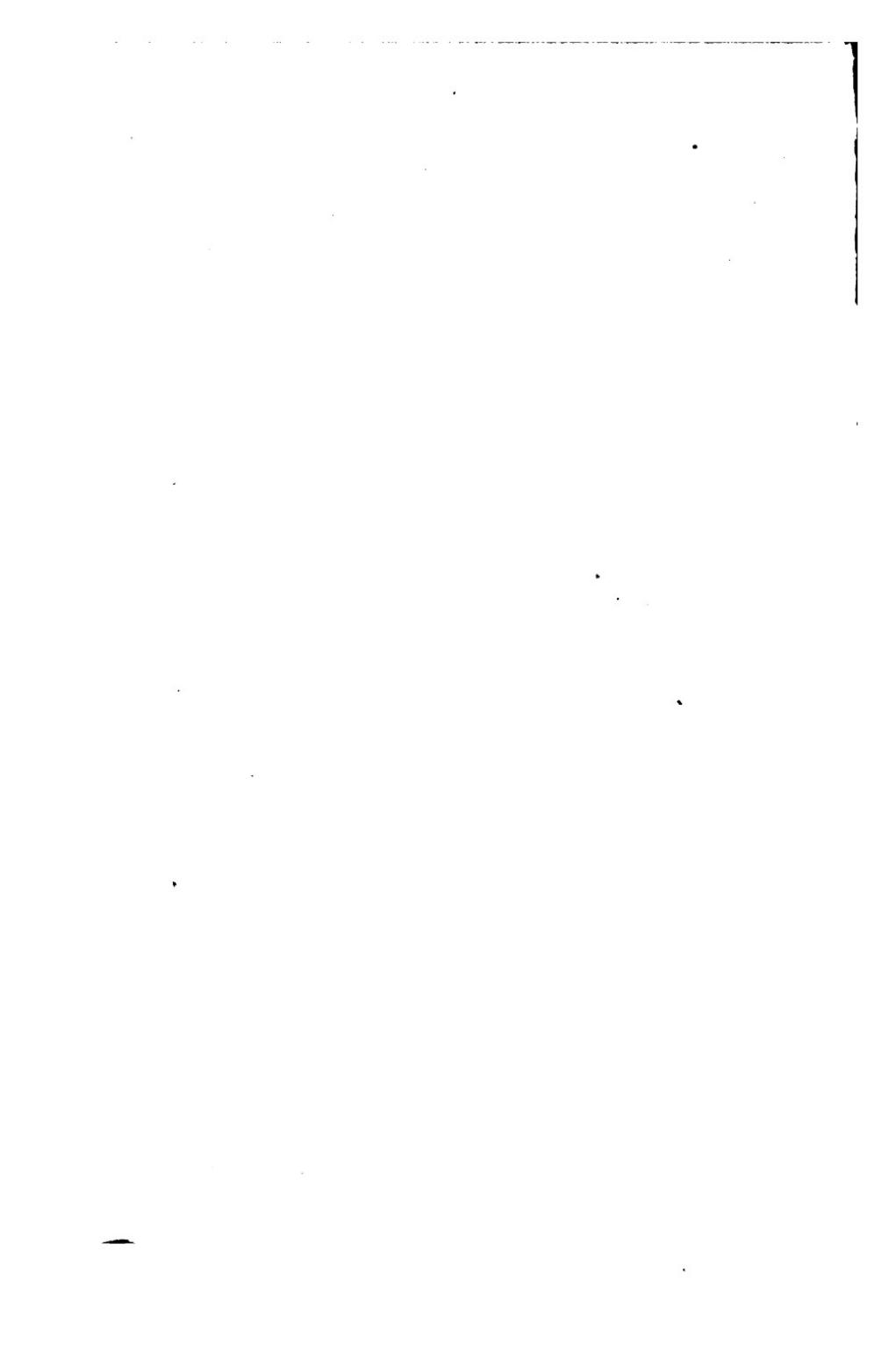
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**THE FEDERAL INCOME TAX
EXPLAINED.**



THE
FEDERAL INCOME TAX
EXPLAINED.

*WITH THE REGULATIONS OF THE TREASURY
DEPARTMENT.*



BY

JOHN M. GOULD
AND

GEORGE F. TUCKER,

AUTHORS OF "NOTES ON THE UNITED STATES STATUTES," ETC.

THIRD EDITION.

BOSTON:
LITTLE, BROWN, AND COMPANY.

1895.

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PREFACE.

THE Income Tax law, incorporated in the recent Act of Congress entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," is new in certain of its clauses, especially in those relating to property acquired by gift and inheritance, and those relating to appeals and to corporations; but in other respects it retains the words, phrases, and clauses, which, in the income tax laws of the time of the Civil War, acquired a settled meaning under the rulings of the courts and the practice of the Bureau of Internal Revenue. The aim of the present treatise is to elucidate the new statute from the decisions and practice affecting the older laws, so far as changes of statutory phraseology have not changed or superseded them. It is believed that most of the decisions

and rulings here stated will be adopted and followed by the courts and departments in passing upon the present Act. The Index shows that quite a large body of law has been collected in a small compass.

The English law (5 & 6 Vict. c. 35) is very exhaustive. It contains one hundred and ninety-four sections, several schedules, and carefully prepared rules upon the method of assessment and general procedure. While the first income tax laws passed in this country were war measures, they were probably suggested by the English law, which had been in existence about twenty years before the passage of the first American statute. The decisions upon the English law, most of which are collated in Ellis's Income Tax Acts, are not always satisfactory as a means of construing our own earlier statutes. They may, however, prove of some value in interpreting the present act. It has not been thought advisable to give copious extracts from the English adjudications, as the technical differences in phraseology between the two Acts were deemed a source of probable embarrassment, while any

attempted delineation of these differences would lead to additional confusion.

Of the less familiar abbreviations, "Bout." denotes Boutwell's Direct and Excise Tax System of the United States (1863), and "Int. Rev. Rec." stands for the Internal Revenue Record.

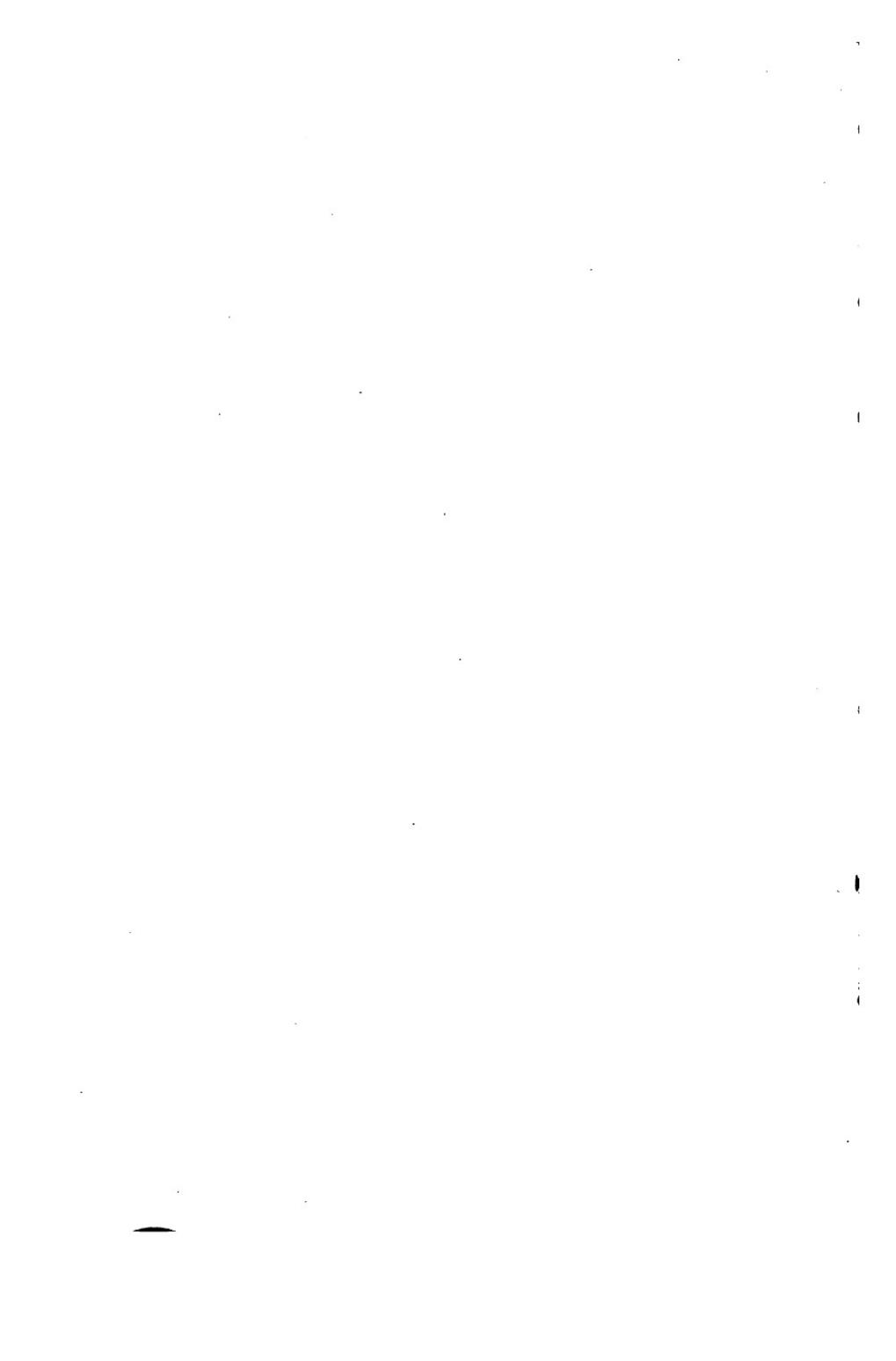


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THE FEDERAL INCOME TAX EXPLAINED.

Constitutional and General Principles. — Income taxes belong to the Bureau of Internal Revenue. Under Art. I., Sect. 2, of the Constitution of the United States, providing that "direct taxes," which are held to include only poll taxes, without regard to property, profession, or any other circumstance, and taxes on real estate, "shall be apportioned among the several States," and Art. I., Sect. 8, providing that "all duties, imposts, and excises shall be uniform throughout the United States," an income tax is held to be constitutionally valid, as being a duty or excise, and not a direct tax.¹

Hylton v. United States, 3 Dallas, 171.

Pacific Ins. Co. v. Soule, 7 Wallace, 433.

Springer v. United States, 102 U. S. 586.

As to the validity of retrospective legislation with respect to penalties, see *infra*, § 29, and notes.

Revenue statutes, being neither remedial nor founded upon any permanent public policy, are to

¹ But see Appendix.

be construed in favor of the taxpayer, and most strongly against the government.

American Net & Twine Co. *v.* Worthington,
141 U. S. 468.

Rice *v.* United States, 53 Fed. Rep. 910.

Statutes relating to frauds upon the revenue, though imposing penalties, are not construed strictly in the defendant's favor, like penal laws, but in such manner as to carry out the intent of the legislature.

United States *v.* Stowell, 133 U. S. 1.

United States *v.* Brown, Deady, 566.

United States *v.* The Coquitlam, 57 Fed. Rep.
706.

Historical. — The first Federal income tax was that contained in the Revenue Law of Aug. 6, 1861, ch. 45 (12 St. at L. 309). This Act imposed a tax of three per cent on all excess of income over \$800, and was repealed and re-enacted by the Act of July 1, 1862, ch. 119 (12 St. at L. 473), which imposed the same rate upon the excess of income over \$600 up to \$10,000, and five per cent on the excess of income over \$600 when the income exceeded \$10,000. The next Act was that of June 30, 1864, ch. 173, §§ 116-123 (13 St. at L. 223, 281), which fixed the rate at five per cent on the excess of income over \$600 up to \$5,000; seven and one half per cent on the excess over \$5,000 up to \$10,000; and ten per cent on the

excess over \$10,000. Certain sections of this Act were amended by the St. of March 3, 1865, ch. 78 (13 St. at L. 479), which levied five per cent on the excess of income over \$600 up to \$5,000, and ten per cent on any excess of income over \$5,000. It was further amended by the Act of July 13, 1866, ch. 184 (14 St. at L. 137). The Act of March 2, 1867, ch. 169 (14 St. at L. 477), imposed five per cent on an excess of income over \$1,000, which, by § 119, was to continue through the year 1870 and no longer. The Act of July 14, 1870, ch. 255 (16 St. at L. 257) levied an income tax of two and a half per cent for 1870 and 1871, and no longer.

Income taxes have also been imposed by State legislation in five at least of the States.

See Stimson's Statute Law, § 339.

In England an income tax was first established in 1842. It is levied year by year under the authority of an annual Act, and many of the original features still remain. The opposition to its passage by attorneys and solicitors is set out in 23 Leg. Obs. 400, 419. See also Mr. Hubbard's Article on Income Tax in National Review, Vol. 2, p. 771. See generally Income Tax, 59 Spectator, 1331; 57 Saturday Review, 561; Magazine Articles cited in Poole's Index, p. 628.

Act of 1894. — "Sect. 27. That from and after the first day of January, eighteen hundred and ninety-five, and until the first day of January,

nineteen hundred, there shall be assessed, levied, collected, and paid annually upon the gains, profits, and income received in the preceding calendar year by every citizen of the United States, whether residing at home or abroad, and every person residing therein, whether said gains, profits, or income be derived from any kind of property, rents, interest, dividends, or salaries, or from any profession, trade, employment, or vocation carried on in the United States or elsewhere, or from any other source whatever, a tax of two per centum on the amount so derived over and above four thousand dollars; and a like tax shall be levied, collected, and paid annually upon the gains, profits, and income from all property owned and of every business, trade, or profession carried on in the United States by persons residing without the United States. And the tax herein provided for shall be assessed by the Commissioner of Internal Revenue and collected and paid upon the gains, profits, and income for the year ending the thirty-first day of December next preceding the time for levying, collecting, and paying said tax."

SECT. 27. **Phrases.** — "*Assessed, levied, collected, and paid.*" The word "assessed," in this clause, does not appear in any of the earlier Acts.

"Upon the gains, profits, and income." The tax of 1861 was "upon the annual income of every person residing in the United States." That of 1862 was "upon the annual gains, profits, or income of every person" there residing. Those imposed by the later Acts were "upon the annual gains, profits, and income of every person residing in the United States, or of any citizen of the United States residing abroad," except that "or" took the place of "and" in this clause in the Act of 1864, and "annual" was omitted in the Act of 1867, as in the present Act.

"Derived from any kind of property," etc. This clause to "whatever" was the same in the previous Acts, except that "interests" stood in place of "interest" in the Acts of 1864 and 1865; and the Act of 1861 read "derived from any kind of property, or from any profession," etc.

"A tax of two per centum." The rate and the amount exempted differed in the preceding Acts, the first tax being three per cent upon the excess of income over \$800.

"And a like tax shall be levied," etc. This clause was added by the Act of 1866, and retained in the Act of 1867, both Acts having the additional words "not citizens thereof" at the end of the sentence, and the Act of 1870, which contained the same clause in substance, concluded with "and not a citizen thereof." The words "from all property owned and" are new in the present statute.

“**Income.**”—The income from a “business” is different from that from a “profession, trade, or employment.” The income from a business “is the net result of many combined influences: the use of the capital invested; the personal labor and services of the members of the firm; the skill and ability with which they lay in, or from time to time renew, their stock; the carefulness and good judgment with which they sell and give credit; and the foresight and address with which they hold themselves prepared for the fluctuations and contingencies affecting the general commerce and business of the country. To express it in a more summary and comprehensive form, it is the creation of capital, industry, and skill.”

Wilcox v. County Commissioners, 103 Mass.
544, 546.

See *Commonwealth v. Ocean Oil Co.*, 59
Penn. St. 61;

Opinion of Justices, 5 Met. 596;

People v. Supervisors, 18 Wend. 605.

Hon. James C. Carter has recently said (see 50 Albany Law Journal, p. 300): “A tax laid directly upon property may and often does invade the principal sum, for it has to be paid whether the property has been productive of profit or not; whereas a tax upon income never invades the principal.”

The instructions under the old Act were that residents should make return in the district where they resided at the time of making return, resi-

dence being that during the year for which income was derived; and if any person resided abroad, his return was to be made in the district where he last resided. 7 Int. Rev. Rec. 59.

The place where a person voted, or was entitled to vote, was formerly held to be his residence, and, if not a voter, the place where the tax on personal property was paid. Bout. 273.

The wife of an alien was held to be an alien, though a citizen before marriage. If she resided abroad, the profits and income from stock, etc., held by a trustee here were not to be returned; if she resided here, she was liable to the tax imposed upon every citizen residing here. 6 Int. Rev. Rec. 66.

It was held that an alien residing abroad was entitled to the same exemption as a native-born or naturalized citizen. 6 Int. Rev. Rec. 18.

It was held that income from personality held by a trustee for persons not citizens and not residing here was not taxable; but note the provisions of this section (27) and of § 29 of the present Act.

Income from an inherited estate in a foreign country of one who had become a citizen there in order to receive the estate was held to be taxable. 3 Int. Rev. Rec. 140.

Where the gains of an association were its sole property, and not divisible among its members, the association was held to be a person within the

meaning of the law, and required to make a return. 10 Int. Rev. Rec. 39.

Where a person died before the end of the income year, the gains, income, etc. during that portion of the year he was in life were held subject to taxation as income.

Mandell v. Pierce, 3 Cliff. 134; see 14 Int. Rev. Rec. 91.

Under the Act of 1870, which imposed a tax on gains, profits, and income for 1871, and no longer, the amount of a promissory note taken in 1871, on the sale in that year of a patent right, but not due until some time in 1872, and paid in that year, was held not taxable as income for 1871.

United States v. Schillinger, 14 Blatch. 71.

Promissory notes, book accounts, etc. due during the year are evidences of debt. Whether or not they are "gains, profits, or income" for that year within the statute depends upon their value intrinsically, or their convertibility into money, property, or available assets. If they have only a nominal, and not a real, value or convertible quality, and a man has realized nothing from them, and therefore does not return them as a part of his income, because he fairly and honestly believes they are not real gains or profits, he cannot be convicted of an untrue return.

United States v. Frost, 9 Int. Rev. Rec. 41.

In *Philadelphia & Reading Railroad Co. v. Barnes*, 12 Int. Rev. Rec. 112, 7 Phila. 543, it was decided that, as the law stood before the Act of 1870, the

dividends and interest paid by railroad companies after January 1, 1870, were not liable to a tax, and that the Act of July 14, 1870, could not be accepted as a legislative exposition of the meaning of the former law, so far as it applied to the present case.

In *Merchants' Ins. Co. v. McCartney*, 12 Int. Rev. Rec. 122, 1 Lowell, 447, it was held that surplus earnings laid aside by a bank before the first income tax law, and profits of sales of real estate bought before that time, were not liable to the income tax when divided afterward, and that under 13 St. at Large, 281, 282, an insurance company holding shares in a bank is not liable to a tax upon a dividend declared by the bank, and on which the bank had paid a full income tax.

In *United States v. Erie Ry. Co.*, 24 Int. Rev. Rec. 76, a tax on interest paid to non-resident aliens was held illegal, as being a tax on the non-resident aliens themselves, and therefore on property beyond the jurisdiction of the taxing power. See this section; *Bartholomay Brewing Co. v. Wyatt*, [1893] 2 Q. B. 499.

Of the English law it was said, in *Attorney General v. Black*, L. R. 6 Exch. 78, 85: "It seems almost impossible that any net could be extended more widely; every possible source of income seems included;" and see *Ibid.*, p. 308. Many points under the English law on gains, profits, and income are presented in *Ellis's Income Tax Acts* (3d ed.).

Betting is a vocation. *Partridge v. Mallandaine*, 18 Q. B. D. 276.

" **Sect. 28.** — That in estimating the gains, profits, and income of any person there shall be included all income derived from interest upon notes, bonds, and other securities, except such bonds of the United States the principal and interest of which are by the law of their issuance exempt from all Federal taxation ; profits realized within the year from sales of real estate purchased within two years previous to the close of the year for which income is estimated ; interest received or accrued upon all notes, bonds, mortgages, or other forms of indebtedness bearing interest, whether paid or not, if good and collectible, less the interest which has become due from said person or which has been paid by him during the year ; the amount of all premium on bonds, notes, or coupons ; the amount of sales of live stock, sugar, cotton, wool, butter, cheese, pork, beef, mutton, or other meats, hay, and grain, or other vegetable or other productions, being the growth or produce of the estate of such person, less the amount expended in the purchase or production of said stock or produce, and not including any part thereof consumed directly by the family ; money and the value of all personal property acquired by gift or inheritance ; all other gains, profits, and income derived from

any source whatever except that portion of the salary, compensation, or pay received for services in the civil, military, naval, or other service of the United States, including Senators, Representatives, and Delegates in Congress, from which the tax has been deducted, and except that portion of any salary upon which the employer is required by law to withhold, and does withhold, the tax and pays the same to the officer authorized to receive it. In computing incomes the necessary expenses actually incurred in carrying on any business, occupation, or profession shall be deducted, and also all interest due or paid within the year by such person on existing indebtedness. And all national, State, county, school, and municipal taxes, not including those assessed against local benefits, paid within the year, shall be deducted from the gains, profits, or income of the person who has actually paid the same, whether such person be owner, tenant, or mortgagor; also losses actually sustained during the year, incurred in trade, or arising from fires, storms, or shipwreck, and not compensated for by insurance or otherwise, and debts ascertained to be worthless, but excluding all estimated depreciation of values and losses within the year on sales of real estate purchased

within two years previous to the year for which income is estimated :

“ *Provided*, That no deduction shall be made for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate ;

“ *Provided further*, That only one deduction of four thousand dollars shall be made from the aggregate income of all the members of any family, composed of one or both parents, and one or more minor children, or husband and wife; that guardians shall be allowed to make a deduction in favor of each and every ward, except that in case where two or more wards are comprised in one family, and have joint property interests, the aggregate deduction in their favor shall not exceed four thousand dollars ;

“ *And provided further*, That in cases where the salary or other compensation paid to any person in the employment or service of the United States shall not exceed the rate of four thousand dollars per annum, or shall be by fees, or uncertain or irregular in the amount or in the time during which the same shall have accrued or been earned, such salary or other compensation shall be included in estimating the annual gains, profits, or income of the person

to whom the same shall have been paid, and shall include that portion of any income or salary upon which a tax has not been paid by the employer, where the employer is required by law to pay on the excess over four thousand dollars;

“Provided also, That in computing the income of any person, corporation, company, or association there shall not be included the amount received from any corporation, company, or association as dividends upon the stock of such corporation, company, or association, if the tax of two per centum has been paid upon its net profits by said corporation, company, or association, as required by this Act.”

Sect. 28. — Line 1. The word “annual” preceded “gains” in the earlier Acts after that of 1861. This section was first cast in its present general form in the Act of 1867, although certain clauses appear in the earlier Acts. — Lines 4-7. The clause from “except” to “taxation” is new. Before “except” the Act of 1867 contained the words “of the United States.” — Line 7. The clause beginning “profits realized” was new in the Act of 1867, which also, after “purchased,” contained the words “within the year or.” — Lines 10-16. This clause is the same in the Act of 1867, except that that Act did not contain the words “or which has been paid by him.” The corresponding clause

in the Act of 1865 was "less the interest paid by or due from such person."—Lines 16, 17. The Act of 1867, with which this clause originated, read "on gold and coupons," as did the Act of 1870, in place of "on bonds, notes, or coupons."—Line 18. "Cotton" is now added to this list for the first time.—Lines 22, 23. The clause "less the amount" to "not" appears here for the first time; the words following, as far as "family," first appear in the Act of 1867, and were retained in the Act of 1870; and the next clause, as to gifts and inheritance, is new in the present Act.—Line 28. After "whatever" the Act of 1867 read, "except the rental value of any homestead used or occupied by any person or by his family in his own right or in the right of his wife; and the share of any person of the gains and profits of all companies, whether incorporated or partnership, who would be entitled to the same, if divided, whether divided or otherwise, except the amount of income received from institutions or corporations whose officers, as required by law, withhold a per centum of the dividends made by such institutions, and pay the same to the officer authorized to receive the same; and except that portion of the salary or pay received," etc. The homestead clause also appears in the Acts of 1864, 1865, and 1870.—Lines 33-42. These two clauses, beginning with "and except" and running through to "indebtedness," are new in this Act.—Lines 43-48. "School," and the clause "not

including those assessed against local benefits," are new in this Act ; otherwise the sentence as to taxes was the same in earlier Acts, the final words, "or mortgagor" being first added in the Act of 1864, the word "county" being first added in the Act of 1865, and the Act of 1862 reading, "national, State, and local taxes." — Lines 50, 51. "Storms," and the clause "and not compensated for by insurance or otherwise," are new in this Act.— Line 55. "Within" is new here. — Line 56. After "estimated," the Act of 1867 further contained the following provision : "The amount actually paid for labor or interest by any person who rents lands or hires labor to cultivate land, or who conducts any other business from which income is actually derived ; the amount actually paid by any person for the rent of the house or premises occupied as a residence for himself or his family ; the amount paid out for usual and ordinary repairs." — Line 82. The clause beginning "and shall include" to the end of the section is new in this Act.

Income, etc. — It was held,—

That legatees were not required to return their legacies. *Bout.* 275. But see the above provision, "money and the value of all personal property acquired by gift or inheritance."

That pensions from the government must be returned. *Bout.* 274; 4 *Int. Rev. Rec.* 55.

That interest accrued during the previous year on United States securities should be returned.

7 Int. Rev. Rec. 60. As to a case of the premium on gold, see 2 Int. Rev. Rec. 5.

That interest accrued during the income year on notes, bonds, etc., if good and collectible at the end of the year, should be returned whether collected or not. 7 Int. Rev. Rec. 59.

That where an absolute deed was taken instead of a mortgage, and an agreement given to reconvey upon the payment of a certain sum equal to the loan with interest, the transaction was equivalent to a mortgage, and the gain to the lender must be returned. 3 Int. Rev. Rec. 140.

That interest should be considered as income only when paid, unless collectible and remaining unpaid by consent of the creditor. Bout. 274.

That incomes from coal mines were to be returned, and no deductions were to be made on account of diminished value, actual or supposed, of the coal vein or bed by mining. Bout. 274.

That the rental value of property occupied by the owner was neither to be included in his income nor deducted. 1 Int. Rev. Rec. 171.

That a party renting his own house and paying rent elsewhere must return the rent received, and was to be allowed to deduct the amount of the rent paid. 4 Int. Rev. Rec. 46 ; 5 Int. Rev. Rec. 154. For a case where land was leased for years under a contract that the lessee should erect a building, and the expense of erecting the building was held to be in the nature of rent, and returnable by the lessor. 7 Int. Rev. Rec. 60.

That where one cultivated the land of another under a contract to pay for the use in produce, it was rent, and should be returned; and the expenses were to be deducted from the income of the lessee only. 7 Int. Rev. Rec. 60.

That scrip dividends returnable as incomes should be returned at their market value. 7 Int. Rev. Rec. 60.

That the tax was assessed upon the income of individuals, and not upon firms. Bout. 275.

That marriage fees of and gifts to a pastor were returnable when the gifts were in the nature of compensation for services, whether in accordance with an understanding at the settlement or an annual custom. 7 Int. Rev. Rec. 59.

That where the earnings of a minor were under the control of the father they were to be included in his income; if entirely free from his control, the assessment was to be separate. 1 Int. Rev. Rec. 181. And if a taxpayer had a minor child in the service of the government receiving a salary, the parent should include in his return so much of the salary as was not subject to a salary tax. 7 Int. Rev. Rec. 59. A decision on the subject of emancipation of a child is given in 11 Int. Rev. Rec. 122. See the second proviso to the above section.

That a taxpayer was to return as income all profits from sale of stocks made within the year, though bought previously. United States *v.* Smith, 12 Int. Rev. Rec. 135. As to the liability of stock-

holders to pay on dividends or other income paid to them by their corporations, see *United States v. Erie Ry. Co.*, 24 Int. Rev. Rec. 76; *Phila. R. Co. v. Barnes*, 12 Id. 112; 7 Phila. 543; *Stockdale v. Ins. Cos., infra*, p. 19; *Merchants' Ins. Co. v. McCartney, infra*, p. 21; *Magee v. Denton*, 5 Blatch. 130.

Interest on railroad bonds earned in 1871 but payable by the coupons in 1872 was held not subject to the tax authorized by the Act of 1870 to be collected in 1871. *United States v. Indianapolis Railroad Co.*, 113 U. S. 711.

In *Gray v. Darlington*, 15 Wall. 63, it was said that the advance in personal property during a series of years does not constitute the gains, profits, or income of any one year of the series, although the entire amount of the advance be at one time turned into money by a sale; and *United States bonds having been sold after being held by the owner for years at an advance over cost*, it was held that the amount was not taxable as "gains, profits, or income" for the year in which the sale was made, under the amendatory Act of 1867.

The tax on brokers, under the Act of 1864, is stated in *United States v. Cutting*, 3 Wall. 441; *United States v. Fisk*, Ibid. 445. As to tax on deposits in savings banks under the old law, see *Bank for Savings v. Collector*, 3 Wall. 495.

A provision, in a defeasance of a railroad mortgage to secure coupon bonds, that the mortgage should be void if the mortgagor paid the debt and

interest without deduction, etc. in respect of taxes, etc., was held, in *Haight v. Railroad Co.*, 6 Wall. 15, not to oblige the company to pay the interest clear of the tax which by the Act of 1864 such companies were "to deduct and withhold from all payments on account of any interest or coupons due and payable."

It was held in *Stockdale v. Ins. Companies*, 20 Wall. 323, that whether the tax on dividends from the earnings of corporations for 1869 be viewed as a tax on the shareholder or on the corporation, it was intended to tax the earnings for that year by the section of the Act of 1870, which limited the duration of the income tax.

See *Barnes v. Railroads*, 17 Wall. 294;
United States v. Railroad Co., 17 Id. 322.

Section 117 of the Act of 1864, which required stockholders in certain companies to return as income all gains and profits to which entitled, whether "divided or otherwise," was held to embrace not only dividends declared, but profits not divided and invested partly in real estate, machinery, and raw material, and partly applied to the payment of debts incurred in previous years.

Collector v. Hubbard, 12 Wall. 1; S. C., *nom. Hubbard v. Brainard*, 35 Conn. 563.

It was held in *United States v. Central Nat. Bank*, 24 Fed. Rep. 577, that when taxes imposed by a State law are imposed upon the stockholders of a national bank, and not upon the corporation, the

failure of the bank to return and pay a tax upon such part of its dividends declared within the year as was represented by the amount paid for such State tax, would not entitle it to exemption to that extent from the tax under the Act of 1866, and the bank having declared a dividend as of earnings for the current year, and paid it as such to the stockholders, proof to avoid the tax that no earnings had been made because of the defalcation of the cashier was inadmissible.

The Act of Congress of July 14, 1870, relating to the taxation of railroad bonds, was part of the general system of income taxation, and fixed a time when that system should expire; and in taking the interest on such bonds as part of the corporate earnings, it applied only to interest actually paid, not to that merely payable.

United States *v.* Louisville R. Co., 33 Fed. Rep. 829.

An insurance company, a stockholder in a bank, received a dividend, three tenths from profits accumulated before the first Act for collecting internal revenue, and seven tenths from profits acquired afterwards. The bank, more than five years before the case was tried, had paid the revenue tax on the seven tenths, and denied a liability to taxation for the three tenths, and it had never been enforced. Held, that the three tenths was capital, and not liable to assessment as income, under the Act of June 30, 1864, and that the seven tenths having

been once assessed to the bank, could not be again assessed to the insurance company.

Merchants' Ins. Co. v. McCartney, 1 Lowell,
447; 12 Int. Rev. Rec. 122.

Income from Business, Profession, etc. — It was held, —

That salaries, except where specially provided for by statute, were income from business. 3 Int. Rev. Rec. 188. See § 33, *infra*, the last clause of which exempts the salaries due to State, county, or municipal officers. Formerly the salary of a judge of a State court was held not liable. *Day v. Buffinton*, 11 Wall. 113; 3 Cliff. 376. See 14 Int. Rev. Rec. 201; and also 4 Int. Rev. Rec. 4. So formerly the revenues of a State, and also the revenues of municipal corporations created for the purpose of exercising within a limited sphere the governmental powers of the State, so far as the latter revenues are municipal in their nature, are exempt from such taxation. *United States v. Baltimore & Ohio R. Co.*, 17 Wall. 322. 18 Att. Gen. Op. 67. As to soldiers honorably discharged, see 11 Int. Rev. Rec. 123.

That the profits of a manufacturer from his business were not exempt because of his having paid an excise tax upon his manufactures. *Bout.* 275.

That the increased value given to a building by permanent improvements should be charged to capital, not to income. *Bout.* 275.

See *Little v. Little*, 161 Mass. 188.

That old debts formerly considered lost, but paid during the income year, should be included in the return. Bout. 274.

That dividends payable in the income year should be returned as income for that year, no matter when declared. Bout. 274.

That a merchant's return should cover the business of the income year, excluding previous years and that uncollected accounts must be estimated. Bout. 273.

That lawyers and physicians might return either the actual fees of the income year no matter when accrued, or the amounts due to the business of that year. 7 Int. Rev. Rec. 59.

That if a manufacturer or dealer had estimated his annual profits by taking inventories of stock, he might take the cost value or the market value. 7 Int. Rev. Rec. 59.

That when a taxpayer had adopted one method of estimating, he could not subsequently adopt another. 7 Int. Rev. Rec. 59.

That there was no distinction between income from business and fixed investments. 7 Int. Rev. Rec. 59.

That if an inventor sold his invention for a gross sum, he should return the whole amount, less expenses of perfecting the invention and procuring a patent; if he sold only a portion of his right during the year he might deduct a proportionate amount of the expense. 7 Int. Rev. Rec. 59.

That life insurance money from a policy taken out by another for the assured was not subject to a legacy or income tax. 3 Int. Rev. Rec. 140.

That gifts of money, when not for services or other valuable consideration, were not liable, and amounts received on life insurance policies and tort damages were exempt. 7 Int. Rev. Rec. 59.

That the payment of a legacy, etc. tax on the bequest of an annuity did not relieve the annuitant from liability on his income. 7 Int. Rev. Rec. 60.

That where any portion of a legacy had been transferred by the executor to the legatee, so that the former had no control of the profits, they must be returned by the legatee. 7 Int. Rev. Rec. 59.

Shares in Companies. — It was held, —

That the tax should be withheld from all payments on account of prize money, irrespective of when the captures were made. 7 Int. Rev. Rec. 11.

That extra pay granted to officers by special acts was liable. 2 Int. Rev. Rec. 108. For cases where certain salaries of government employees were to be included with other taxable income, and, in the event of the salary exceeding a certain amount, the amount of salary from which the tax had been deducted was to be deducted from the gross income, see 7 Int. Rev. Rec. 59.

That where a corporation distributed its assets after liquidation among its stockholders, the dif-

ference between the price paid for the shares and the sum so received was taxable as profits. 2 Int. Rev. Rec. 138. As to undistributed earnings made before September 1, 1862, see *Bout.* 275; 12 Int. Rev. Rec. 157.

That if a corporation took any of its earnings and added them to the working capital and then made a new division of stock, the stockholders were to pay a tax on the additional stock; and if, on the other hand, it divided to all its stockholders its net earnings during the year, and after so doing gave to each stockholder two certificates for one held before, there was no liability for such additional certificate except upon the dividend, and that there was no tax on a nominal increase. 1 Int. Rev. Rec. 188.

That such portions of a stock dividend as were made up of earnings acquired before July 1, 1862, were not to be returned. 2 Int. Rev. Rec. 61.

That a person who would be entitled to a share in the profits of a company, etc., if divided, should return the same as income, whether divided or otherwise. 7 Int. Rev. Rec. 60; 1 Id. 157. See *Collector v. Hubbard*, 12 Wall. 1.

That profits of companies accruing in the income year were liable to be returned; but if there was a division and no surplus remained at the end of the income year, only the amount divided should be returned. 1 Int. Rev. Rec. 180.

That profits of a gas company carried to con-

struction account should be returned as income by the stockholders ; and undistributed earnings made after September, 1862, should have been returned as income by the stockholders for the various years in which the same accrued. 3 Int. Rev. Rec. 164. As to stock dividend under the Act of 1861, see 1 Int. Rev. Rec. 155.

Points of practice as to the tax-payer entering the dividends upon his return, etc., are set forth in 10 Int. Rev. Rec. 9.

That depositors receiving interest from savings banks described in the proviso to § 110 of the Act of 1864 were required to return the same. 11 Int. Rev. Rec. 73.

Profits from the Sale of Real Estate. — It was held,—

That if a part of a piece of real estate purchased within the required time was sold, the excess of the sum received over the sum paid for the same portion should be returned. 5 Int. Rev. Rec. 138. And the fact that the real estate had been increased in value by the erection of buildings, either within the prescribed time, or within some period previous, did not render any part of the receipts of sale taxable. 1 Int. Rev. Rec. 196.

That profits made on sales of real estate purchased during the year for which the return was made, or within two years previous, should be returned. 7 Int. Rev. Rec. 60. As to points in case

of underlying coal, see 7 Int. Rev. Rec. 60; 5 Int. Rev. Rec. 154. It was held that the profit on the sale of mined coal by the miner was the difference between the amount received and the expense of production (excluding all deductions for the personal service of the miner and family) plus the amount paid for each ton to the owner or lessor of the mine; and the profit of the owner or lessor of the mine thus receiving pay from the lessee or miner was the difference between the amount received for each ton and the estimated amount paid for each originally. 7 Int. Rev. Rec. 60.

That the profit realized on a sale of standing or felled timber was returnable, irrespective of the time when the land was purchased; that timber was converted into personality by severance from the land on which it grew, and profits from the sale thereof were as liable to the tax as those from the sale of other products of the soil, or from mines, and that a farmer who kept woodland to cut and sell firewood, or a proprietor who sold to others the privilege of cutting, etc. the timber, should be required to estimate the receipts as a part of his income. Bout. 301; 1 Int. Rev. Rec. 171.

That when timber was sold standing the taxable profits were arrived at by estimating the value of the land after the timber was removed and adding the net amount for the timber, and from this sum deducting the estimated value of the

land at the beginning of the income year. 7 Int. Rev. Rec. 58.

Produce, Live Stock, etc.— It was held,—

That a farmer should return all produce sold within the income year, and that there must be delivery, either actual or constructive, to constitute a sale. 7 Int. Rev. Rec. 59.

That produce raised during the income year, or previous years, remaining on hand unsold at the end of the income year, need not be returned. 11 Int. Rev. Rec. 113; 2 Id. 90. And so of produce consumed in the immediate family. 7 Int. Rev. Rec. 58. See *United States v. Simons*, 1 Abb. U. S. 470.

That profits on sales of live stock were to be estimated by deducting the purchase money from the gross receipts from the sale. 7 Int. Rev. Rec. 58.

It was also held,—

That profits on the sales of personal property should be assessed irrespective of the time when purchased; and that the rule relating to realty did not apply to personality. 11 Int. Rev. Rec. 66; 2 Id. 44; 1 Id. 139.

That leases were personal property. 7 Int. Rev. Rec. 59; 2 Id. 44.

That a mining claim arising from the location of a mine on the public mineral lands was personal property, and the difference between the actual cost

and the price received from the claim was the profits. 4 Int. Rev. Rec. 124.

It is stated above that the clause "money and the value of all personal property acquired by gift or inheritance" is new in the present Act. It is to be remembered that during the existence of the former Acts, or at least during a portion of the time, the national legacy and succession tax law was in force. The decisions upon this law are numerous, but they are perhaps of doubtful value in construing the clause in the present Act. Many of the States have collateral inheritance laws,¹ and it would seem that a legatee who resides in a State where such a law is in force must under certain conditions pay a double tax.

Exemptions. — It was held, —

That husband and wife were members of the same family, though living separate, unless separated by divorce or other operation of law; that minor children and parents were members of the same family, whether living together or not, and that guardians were to be allowed no special deduction in favor of wards when members of any family composed of one or both parents, and one or more minor children, or husband and wife. 7 Int. Rev. Rec. 59.

That a family of the mother and minor children

¹ See Appendix.

was entitled to only one deduction, and the guardian of the minor children was entitled to deduct a ratable proportion of the same from the income of his wards. 11 Int. Rev. Rec. 89.

That if a minor had a legally appointed guardian invested with the power of managing his property, the guardian should be allowed the statutory deduction in favor of his ward, whether the ward lived with his parents or not, and whether the guardian was his parent or not; that only one deduction, however, should be allowed to two or more wards in one and the same family where their property was joint, and that the property must be under the control of some other guardian than the guardian by nature, i. e. the father, or if dead, the mother; but that the person who would be guardian by nature might also be duly appointed guardian, and then the deduction might be allowed when the property of the wards was several. 11 Int. Rev. Rec. 153.

That an association so formed that its gains were the property of the whole association, and were not divisible among the members, was only entitled to the statutory exemption, and was not entitled to the statutory exemption for each member. 10 Int. Rev. Rec. 39.

Deductions, taxes, etc. — It was held, —

That taxes deducted from the income of a previous year could not be deducted again. 1 Int. Rev. Rec. 181.

That when the owner occupied the property, he was entitled to deduct the taxes paid thereon as if the same were rented. 1 Int. Rev. Rec. 155.

That State and municipal taxes paid upon a homestead, and ordinary repairs thereon, were deductible. 11 Int. Rev. Rec. 89.

That national, State, county, and municipal taxes actually paid were deductible from the income of the year in which payment was made, even though paid on property from which no income was derived. 11 Int. Rev. Rec. 98. But that such taxes not actually paid until after the end of the income year should not be deducted from that year's income, even though they might have been then due. 7 Int. Rev. Rec. 60. As to legacy and succession taxes, see 7 Int. Rev. Rec. 59.

That assessments by municipal corporations for the laying out, etc. of streets, sewers, etc., might be deducted from income where they were laid upon all taxpayers within the corporation. 1 Int. Rev. Rec. 196.

That assessments upon the property holders of a certain locality by the municipal authorities on account of special improvements in streets adjoining their premises, should be deducted from the income of persons so assessed. 5 Int. Rev. Rec. 115; 3 Id. 188, 204.

That where by State laws stocks divided into shares were not taxable by cities and towns, but were taxed to the companies, and the tax collected

by the State was credited to the towns where the stockholders resided, the stockholder could not deduct the tax from his income, since the deduction was made by the corporation before the dividend was declared. 1 Int. Rev. Rec. 181. But see 10 Int. Rev. Rec. 9.

That the amount withheld by corporations from the dividends of the shareholder, as provided by the internal revenue laws, should be deducted, since the tax was in reality a tax upon the shareholder, and its payment by the corporation was merely a mode of collecting it. 10 Int. Rev. Rec. 9.

Losses. — It was held,—

That losses in one kind of business might be deducted from the gains in another, or from the gross income of the year, and that assessors should not allow the deduction of amounts claimed to have been lost in business when in reality they should be regarded as investments or expenditures. 3 Int. Rev. Rec. 140; 7 Id. 59.

That no so called loss incurred by a gift of property could be allowed as a deduction. 7 Int. Rev. Rec. 59.

That the fact that income was devoted to payment of debts did not release the same from liability to income tax. 7 Int. Rev. Rec. 59.

That the original cost of property destroyed by fire during the year, less insurance received, might be deducted from the income for that year of the

person to whom the loss occurred. 5 Int. Rev. Rec. 154.

That a person was not allowed to improve the property, but was allowed to devote the income to restoration. 1 Int. Rev. Rec. 180.

That the loss of a stock company by fire or shipwreck, if liable to tax, would be deductible from its income, not from that of its stockholders; and the fact that such company was not subject to income tax made a loss of this kind none the less a loss of the company, and it could not be deducted from the income of the stockholder. 5 Int. Rev. Rec. 148.

That estimated appreciations or depreciations of the value of property were not to be considered in ascertaining amounts to be taxed. 5 Int. Rev. Rec. 154.

That payment by a surety made the principal his debtor. Whether the debt was worthless or not was a question to be determined in each particular case. Money paid as surety would not necessarily be lost, but when found to be a loss it might be deducted under the head of "debts ascertained to be worthless." 9 Int. Rev. Rec. 121.

That the whole amount expended for fertilizers applied during the income year to a farmer's lands might be deducted, but no deduction was to be allowed for fertilizers produced on the farm, and the cost of seed for sowing, etc. might be deducted. 7 Int. Rev. Rec. 58.

That no deduction could be allowed for the sub-

sistence of laborers employed on a farm so far as they lived on its produce. 3 Int. Rev. Rec. 140.

That there can be no deduction for depreciation in stocks or other property until disposed of and a loss realized. 7 Int. Rev. Rec. 59. But where stocks were sold for less than actual cost the difference between such cost and the price was allowed as a deduction from income of the year of sale. 7 Int. Rev. Rec. 59.

That losses during the income year on sales of real estate purchased during the income year, or within two years previous, might be deducted from the income for such income year. 7 Int. Rev. Rec. 60.

That debts previously considered good, but found to be worthless during the income year, might be deducted from the creditor's income for that year, if never before deducted. 7 Int. Rev. Rec. 60.

That losses of capital such as by robbery, or as surety, etc., could not be deducted. 7 Int. Rev. Rec. 60. And losses in business since the end of the income year could not enter into the income assessments for that year. Bout. 275. 1 Int. Rev. Rec. 181; 2 Id. 68

That no deduction could be made for money paid on a judgment against a taxpayer in an action of tort. 1 Int. Rev. Rec. 155.

That the amount paid for a substitute by one drafted during the Civil War could not be deducted, (2 Int. Rev. Rec. 92,) and that an officer could not

deduct the expense of servant hire or fuel, unless the latter was consumed in business, but that he might deduct house rent. 1 Int. Rev. Rec. 100.

That a mere speculative loss, there being no sale, could not be deducted. 3 Int. Rev. Rec. 109. So of estimated depreciations, as of vessels. 1 Int. Rev. Rec. 109, 197.

That where a farmer lost animals by death, he might deduct the purchase money ; but if the animals were raised by him, there could be no deduction. 3 Int. Rev. Rec. 100.

That where a person could not be compelled to pay interest nominally falling due in the year, it could not be deducted, except that where interest was paid on an income paying business, only such portion as was not in excess of the interest due to the taxpayer was to be offset against income. 7 Int. Rev. Rec. 59.

That where a company had collapsed and the stock was worthless, the loss on such stock should be deducted from the income of the year in which the company ceased to exist. 11 Int. Rev. Rec. 105.

To the effect that there must be a discretion given in making returns, and that it is not necessary to make a debt deductible that it should be declared worthless at law or in equity, see

United States *v.* Frost, 9 Int. Rev. Rec. 41.

Rent, Labor, Repairs, etc. — It was held, —
That money paid for labor, except such as was

employed in domestic matters or in producing articles consumed by the family, might be deducted. 7 Int. Rev. Rec. 58.

That there was no deduction for the cost of unproductive labor; but if house servants were employed a part of the time in productive labor, a proportionate part of the wages might be deducted. 7 Int. Rev. Rec. 58. But the proprietor's labor could not be deducted. 1 Int. Rev. Rec. 156. And expenditures for labor in one calendar year were not deductible from the proceeds of the crop of a subsequent year. 4 Int. Rev. Rec. 12.

That the value of the services of one's minor children, whether paid for by him or not, was not deductible; but adult children working for him and receiving compensation were like other hired laborers. 7 Int. Rev. Rec. 58.

That money expended in farming, gardening, etc., for other than pecuniary profits, was not deductible. 7 Int. Rev. Rec. 60.

That the salary of one taking care of real estate was deductible from such income of the person paying the salary as was derived from the real estate. 3 Int. Rev. Rec. 102.

That no deduction could be made for compensation paid for services of a minor son. Bout. 274.

That if expenses claimed to be deductible were not specified, the assessor might disallow them if he doubted their legality. 1 Int. Rev. Rec. 100.

That costs of suit, etc. arising from ordinary

business were the same as other expenses thereof, and might be deducted from the gross profits. 7 Int. Rev. Rec. 59.

That medical expenses, store bills, etc. were not deductible, but those for repair of tools, etc. used in business were. 7 Int. Rev. Rec. 59. And physicians obliged to keep a horse were allowed to deduct so much of the expense as was referable to the business. 7 Int. Rev. Rec. 59.

That the amount paid for the good will of a business was capital, and not deductible. 7 Int. Rev. Rec. 60.

That so much of the expense of railway season-tickets used in going from home to business and returning as was fairly chargeable to business expenses might be deducted. 11 Int. Rev. Rec. 172.

That necessary expenses of conveyance in travelling in the prosecution of business might be deducted. 7 Int. Rev. Rec. 60. So hotel bills incurred in the prosecution of business or in temporarily residing in hotels in the prosecution of business, were to be deducted. 11 Int. Rev. Rec. 122.

That insurance moneys paid as an expense of business, but not other insurance moneys, were deductible, and insurance paid by a tenant was deductible from the tenant's income as rent paid. 7 Int. Rev. Rec. 59.

That the expense of sinking wells worthless

when exhausted was a necessary expense of the business of producing oil for sale, and might be deducted from the income of one so engaged. But that those who sank wells to sell to others should not be allowed the deduction. 11 Int. Rev. Rec. 123.

That interest on borrowed capital used in business might be deducted. Bout. 275.

That interest paid on money invested in business or real estate, from which no income was derived, was not deductible; but interest thus paid might be offset against interest due to the taxpayer. 11 Int. Rev. Rec. 50; 7 Id. 59.

That the subsistence of horses, etc. used in carrying on the farm might be deducted. Bout. 274. And the expenses of carrying on a farm might be deducted from the income of the year only when paid. 6 Int. Rev. Rec. 3.

That if a mortgage on a homestead was given to secure the payment of money invested in business from which income was derived, the interest paid was deductible; but where, however, the mortgage was given to secure the purchase price, or any part thereof, interest paid was not deductible, except where it might be offset against interest received or falling due; and if interest had been received by renting any portion of the mortgaged premises, a ratable deduction of interest paid should be allowed. 11 Int. Rev. Rec. 89.

That expenses on property, real or personal,

from which no income was derived, were not deductible. 11 Int. Rev. Rec. 50.

That rent of a homestead actually paid might be deducted, but the rental value of the taxpayer's property was not deductible; but where the taxpayer rented a furnished house, that part of the rent paid for the use of the furniture was not deductible. 7 Int. Rev. Rec. 59.

That any one claiming a deduction for expense for room rent must satisfy the assessor that the room constituted his home and residence; and in this event he might deduct what he paid for rent, irrespective of rent of furniture or care of room; and when rent was deducted as an expense of business, it could not be deducted again as rent, and one hiring a house and subletting a portion could not deduct more than the excess of his payments over receipts. 7 Int. Rev. Rec. 59.

That where a taxpayer paid a gross sum for room and board, and had no home elsewhere, he could deduct a fair allowance for rent of such room, and that the assessor should determine, from his best information, what proportion of the amount paid was payment for the room only, but that no deduction should be allowed for rent of furniture, care of rooms, or for fuel or lights used. 11 Int. Rev. Rec. 58.

That where a mortgage was given on a homestead for the purchase price, or any part thereof, the interest paid was not deductible except where

it might be offset against interest received or falling due; and if income was received from the rental of any portion of the mortgaged premises, a ratable deduction of interest paid should be allowed; and if a mortgage had been given on a homestead to secure the payment of money invested in business, from which income was derived, the interest paid was deductible from income. 11 Int. Rev. Rec. 89, 97.

New Buildings, Permanent Improvements, or Betterments. — It was held,—

That repairs should be distinguished from permanent improvements. 2 Int. Rev. Rec. 61.

See *Little v. Little*, 161 Mass. 188.

That expenses for ditching, etc. new land were for permanent improvements, and not deductible. 7 Int. Rev. Rec. 58.

That “permanent improvements” and “betterments,” as used, were nearly synonymous, and referred to that class of improvements permanently increasing the value of the property, while “repairs” were those improvements which prevented the property from becoming useless or depreciating; and that in ascertaining the amount to be allowed for repairs, the assessor must determine, according to circumstances, how much of the improvements were to prevent depreciation and how much were to give it permanent additional value. 5 Int. Rev. Rec. 130.

That repairs were allowable irrespective of the productive nature of the property. 1 Int. Rev. Rec. 156.

That the replacing of worn-out tools, etc. was repairs, so far as the new article equalled the estimated value of the old on January 1, 1862, and was permanent improvement in the amount by which the value of the new article exceeded that of the old on that date. 2 Int. Rev. Rec. 61.

That the removal of an old roof and the substitution of a modern one, and raising the walls of the building to conform thereto, were improvements. Bout. 306.

That amounts expended by the purchaser of a building in repairing injuries thereto prior to his purchase were, so far as he was concerned, betterments made to increase the value, and were not deductible. 7 Int. Rev. Rec. 60.

That expenses in putting property in a better condition than when purchased, or, if purchased before January 1, 1862, than on that date, were not deductible. 2 Int. Rev. Rec. 61; 11 Id. 50, 73.

That the laying of a new floor or putting on a new roof was generally ordinary repairs; but the replacing of a shingle roof by a slate one, or a board floor by a tile one, or indeed the substituting of a higher-priced article for an inferior, was not ordinary repairs, and only the value of the inferior article would be deductible. 11 Int. Rev. Rec. 50.

As to a railroad not being entitled to have the interest upon certain bonds deducted from its net earnings, see *Sioux City R. Co. v. United States*, 110 U. S. 205. See also *Haight v. Railroad Co.*, 6 Wall. 15; 1 Abb. U. S. 81; *Blake v. National Banks*, 23 Wall. 307, 320; *Missouri River R. Co. v. United States*, 19 Fed. Rep. 66.

"SECT. 29.—That it shall be the duty of all persons of lawful age having an income of more than three thousand five hundred dollars for the taxable year, computed on the basis herein prescribed, to make and render a list or return, on or before the day provided by law, in such form and manner as may be directed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to the collector or a deputy collector of the district in which they reside, of the amount of their income, gains, and profits, as aforesaid; and all guardians and trustees, executors, administrators, agents, receivers, and all persons or corporations acting in any fiduciary capacity, shall make and render a list or return, as aforesaid, to the collector or a deputy collector of the district in which such person or corporation acting in a fiduciary capacity resides or does business, of the amount of income, gains, and profits of

any minor or person for whom they act, but persons having less than three thousand five hundred dollars income are not required to make such report; and the collector or deputy collector shall require every list or return to be verified by the oath or affirmation of the party rendering it, and may increase the amount of any list or return if he has reason to believe that the same is understated; and in case any such person having a taxable income shall neglect or refuse to make and render such list and return, or shall render a wilfully false or fraudulent list or return, it shall be the duty of the collector or deputy collector to make such list, according to the best information he can obtain, by the examination of such person, or any other evidence, and to add fifty per centum as a penalty to the amount of the tax due on such list in all cases of wilful neglect or refusal to make and render a list or return; and in all cases of a wilfully false or fraudulent list or return having been rendered, to add one hundred per centum as a penalty to the amount of tax ascertained to be due, the tax and the additions thereto as a penalty to be assessed and collected in the manner provided for in other cases of wilful neglect or refusal to render a

list or return, or of rendering a false or fraudulent return :

"Provided, That any person, or corporation in his, her, or its own behalf, or as such fiduciary, shall be permitted to declare, under oath or affirmation, the form and manner of which shall be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, that he, she, or his, or her, or its ward or beneficiary, was not possessed of an income of four thousand dollars, liable to be assessed according to the provisions of this Act; or may declare that he, she, or it, or his, her, or its ward or beneficiary has been assessed and has paid an income tax elsewhere in the same year, under authority of the United States, upon all his, her, or its income, gains, or profits, and upon all the income, gains, or profits for which he, she, or it is liable as such fiduciary, as prescribed by law; and if the collector or deputy collector shall be satisfied of the truth of the declaration, such person or corporation shall thereupon be exempt from income tax in the said district for that year; or if the list or return of any person or corporation, company, or association shall have been increased by the collector or deputy collector, such person or cor-

poration, company, or association may be permitted to prove the amount of income liable to be assessed ; but such proof shall not be considered as conclusive of the facts, and no deductions claimed in such cases shall be made or allowed until approved by the collector or deputy collector. Any person, or company, corporation, or association, feeling aggrieved by the decision of the deputy collector, in such cases may appeal to the collector of the district, and his decision thereon, unless reversed by the Commissioner of Internal Revenue, shall be final. If dissatisfied with the decision of the collector, such person, or corporation, company, or association may submit the case, with all the papers, to the Commissioner of Internal Revenue for his decision, and may furnish the testimony of witnesses to prove any relevant facts, having served notice to that effect upon the Commissioner of Internal Revenue, as herein prescribed.

“ Such notice shall state the time and place at which, and the officer before whom, the testimony will be taken ; the name, age, residence, and business of the proposed witness, with the questions to be propounded to the witness, or a brief statement of the substance of the testimony he is expected to give :

“Provided, That the Government may at the same time and place take testimony upon like notice to rebut the testimony of the witnesses examined by the person taxed.

“The notice shall be delivered or mailed to the Commissioner of Internal Revenue a sufficient number of days previous to the day fixed for taking the testimony to allow him after its receipt at least five days, exclusive of the period required for mail communication with the place at which the testimony is to be taken, in which to give, should he so desire, instructions as to the cross-examination of the proposed witness.

“Whenever practicable, the affidavit or deposition shall be taken before a collector or deputy collector of internal revenue, in which case reasonable notice shall be given to the collector or deputy collector of the time fixed for taking the deposition or affidavit:

“Provided further, That no penalty shall be assessed upon any person, or corporation, company, or association, for such neglect or refusal, or for making or rendering a wilfully false or fraudulent return, except after reasonable notice of the time and place of hearing, to be prescribed by the Commissioner of Internal Revenue, so as to give the person charged an opportunity to be heard.”

Sect. 29.—Phrases. — Lines 8, 9, 55, 56. The words “with the approval of the Secretary of the Treasury” are new in this Act.—Line 10. The words “assessor” and “assistant assessor” previously took the place of “collector” and “deputy collector.”—Line 14. The words “agents, receivers,” and “or corporations,” (here and below,) are new.—Lines 18, 19. The words “or corporation” and “or does business” are new.—Line 30. The words “having a taxable income” are new.—Lines 32, 39. “Wilfully” is new.—Line 36. After “person” the Act of 1867 contained the further words “or his books or accounts,” and the Act of 1865 the words “and his books and accounts.”—Line 37. The penalty for neglect or refusal to make a return was fifty per cent increase, as here, in the Acts of 1867 and 1870, and twenty-five per cent in the Act of 1865.—Line 60. The words “or it, or his, her, or its ward or beneficiary” are new.—Line 71. The words “for the year” are new.—Lines 72, 73. The word “party” previously took the place of “person or corporation, company, or association.”—Line 75. The words “exhibit his books and accounts and” followed “may,” and the words “and declare on oath or affirmation” followed “prove” in the Acts of 1865 and 1867.—Line 87. After “final” the Acts of 1864, 1865, and 1867 also contained the words “and the form, time, and manner of proceedings shall be subject to rules and regulations to be prescribed by the Commissioner of Internal Revenue.”

— All the rest of this section is new, except the final proviso, which was added by the Act of 1867 and retained in the Act of 1870. This section concluded with the following clause in the Act of 1870: —

“ *Provided*, That no collector, deputy collector, assessor, or assistant assessor, shall permit to be published in any manner such income returns, or any part thereof, except such general statistics, not specifying the names of individuals or firms, as he may make public, under such rules and regulations as the Commissioner of Internal Revenue shall prescribe.”

Returns. — The examination of a taxpayer’s books and accounts, which was expressly allowed by the earlier Acts, is not contrary to the U. S. Constitution, either as being an unreasonable seizure and search or as compelling a party to testify against himself. See *Boyd v. United States*, 116 U. S. 616;

Stanwood v. Green, 2 Abb. U. S. 184;

Re Strouse, 1 Sawyer, 605.

The unexplained destruction or disappearance of the taxpayer’s books of account is *prima facie* evidence of fraud. 1 Int. Rev. Rec. 155.

Although an income return is not required to be sworn to, yet when the oath is permitted by the statute, false swearing is perjury.

United States v. Smith, 1 Sawyer, 277.

The oath taken when the return is rendered is

not available for an examination as to penalties or increase of tax.

Magee v. Denton, 5 Blatch. 130.

In the case of lawyers and physicians, the oath may be modified in a manner appropriate to their method of computing their income.

Verification of a return before a notary public is only permissible in the case of members of Congress, etc., whose business necessitates their absence from home when the return is made. 11 Int. Rev. Rec. 145.

The taxpayer is not obliged to answer questions asked him, but his refusal to answer may properly be construed against him. 1 Int. Rev. Rec. 155.

Legal representatives should make return for their decedent.

Mandell v. Pierce, 3 Cliff. 134.

7 Int. Rev. Rec. 59, 193.

In the case of an association like the Shakers, its trustees may make return of its income. 10 Int. Rev. Rec. 39.

In the case of persons under guardianship, the duly appointed guardian, if any, should make return of the ward's income ; if none has been appointed, the parent, as natural guardian, may act. If there is no other person to act, the ward may make the return ; if he neglects so to do, an independent assessment may be made, omitting the penalty. 7 Int. Rev. Rec. 59 ; 11 Id. 186 ; Bout. 258.

The guardian's return should always be upon information and belief. 1 Int. Rev. Rec. 181.

As to the form of notice to make return, see 9 Int. Rev. Rec. 113.

The guardian's residence determines the district for his return ; if he resides abroad ; the ward's residence determines the district. 3 Int. Rev. Rec. 172.

Remedies.— If it is desired to contest in the courts the validity of an assessment, payment may be made under protest, and a suit may be thereafter instituted against the collector to recover the amount thus paid.

Philadelphia v. The Collector, 5 Wall. 720, 731.

Greely v. Thompson, (10 How. 225,) 13 U. S. Sup. Ct. (Lawyers' ed.) 397, and note.

Erskine v. Van Arsdale, (15 Wall. 75,) 21 Id. 63, and note.

Nelson v. Carman, 5 Blatch. 511.

Cutting v. Gilbert, 5 Blatch. 259.

United States v. Kaufman, 96 U. S. 567.

Reynolds v. Williams, 4 Biss. 108.

Gale v. Sauerwein, 1 Hughes, 332.

The protest need not be in writing, but must clearly save the right of suit to recover back the tax.

Wright v. Blakeslee, 101 U. S. 174 ; 13 Blatch. 421.

This remedy is exclusive, and suit will not lie

to restrain collection of the tax, and to have it declared void.

Snyder v. Marks, 109 U. S. 189.

Miles v. Johnson, 59 Fed. Rep. 38.

Pullan v. Kinsinger, 2 Abb. U. S. 94.

Roback v. Taylor, 2 Bond, 36.

Treat v. Staples, Holmes, 1.

Alkan v. Bean, 8 Biss. 83.

The fact that an assessment has been paid does not bar a suit to recover an amount claimed to be due beyond the amount so assessed and paid, even though it included the added penalty.

United States v. Little Miami, &c. R. Co. 26

Int. Rev. Rec. 101.

Doll v. Evans, 15 Ibid. 143; 9 Phila. 364.

United States v. Tilden, 9 Ben. 368.

United States v. Hazard, 11 Am. Law Rev. 381.

Under the Internal Revenue Laws, a suit cannot be maintained against a collector to recover back an internal tax erroneously or illegally assessed or collected, or a penalty collected without authority, or any sum alleged to have been excessive or in any manner wrongfully collected, if the taxpayer or other person making such payment has failed, within two years next after the cause of action accrued, to present to the Commissioner of Internal Revenue his claim for refunding.

U. S. Rev. Stats. § 3228.

Kings Co. Savings Inst'n v. Blair, 116 U. S. 200.

As § 29 of the present Act provides for an ap-

peal to the Commissioner of Internal Revenue, the suit cannot, under U. S. Rev. Stats. §§ 3226, 3227, be maintained until such appeal has been duly made and the Commissioner's decision rendered, except that, if his decision is delayed more than six months from the date of the appeal, the suit may be brought without first having such a decision at any time within two years after the cause of action accrued, or, when the case is pending before the Commissioner, within one year after such decision.

Bailey v. Railroad Co., 22 Wall. 604.

Cheatham v. United States, 92 U. S. 85, 89.

Stewart v. Barnes, 153 U. S. 456, 458.

Commissioners v. Buckner, 48 Fed. Rep. 533.

Hicks v. James, 48 Fed. Rep. 542; 110 U. S. 272.

Ray v. United States, 50 Fed. Rep. 166.

United States v. Pacific R. Co., 4 Dillon, 66.

Cotton Press Co. v. Collector, 1 Woods, 296.

Francis v. Slack, 16 Int. Rev. Rec. 134.

Coblens v. Abel, Woolw. 293.

The right of action in such cases must be founded upon the Acts of Congress, and not upon an implied promise at common law, since a promise to refund cannot be implied where the statute makes it the officer's duty to pay into the public treasury all amounts collected.

The Collector v. Hubbard, 12 Wall. 1.

Erskine v. Hohnbach, 14 Wall. 613.

Haffin v. Mason, 15 Wall. 671.

Braun v. Sauerwein, 10 Wall. 218.

James v. Hicks, 110 U. S. 272.

Magee v. Denton, 5 Blatch. 130.

Hubbard v. Kelley, 8 W. Va. 46.

San Francisco S. Soc. v. Cary, 2 Sawyer, 333.

Lauer v. United States, 5 Ct. Cl. 447.

In *Stewart v. Barnes*, 153 U. S. 456, 458, Mr. Justice Shiras said with reference to § 19 of the Act of July 13, 1866, ch. 184, (14 Stat. at L. 102,) and § 44 of the Act of June 6, 1872, ch. 315 (now Rev. Stats. § 3227) : "Under either of those Acts, before an action could be maintained in any court, an appeal must first have been made to the Commissioner. In the Act of 1866 there was no limitation of time within which such an appeal was to be made. The Act of 1872 required that it should be made within two years from the time the cause of action accrued. Under the earlier Act, if such appeal had been made, still no action could be maintained in any court unless a decision should have been made upon the claim by the Commissioner, in which event the suit must have been brought within six months from the time of the decision, or within the same period after the Act took effect. Under the later Act, if the Commissioner delayed his decision for more than six months, the claimant was not compelled to await it, but might have sued within six months next following the six months of the Commissioner's delay, or one year from the time of appeal; but if the claimant had allowed that period to terminate without instituting suit, he

must then have waited, as before, until the claim should have been passed upon, and have sued within one year thereafter."

The Commissioner is not limited to paying a judgment against a collector to him, but may pay it directly to the plaintiff.

United States v. Frerichs, 124 U. S. 315 ; 21 Ct. Cl. 16.

The Commissioner, although authorized to refund taxes erroneously collected, is not strictly obliged so to do ; the matter rests in his discretion, and he should act justly. His determination cannot be questioned by the disbursing officers.

13 Att. Gen. Op. 439.

Woolner v. United States, 13 Ct. Cl. 355.

Barnett v. United States, 104 U. S. 278 ; 16 Ct. Cl. 515 ; 17 Id. 434.

Nixon v. United States, 18 Ct. Cl. 448.

As § 29 declares that "it shall be the duty of the collector or deputy collector" to add the penalty for failure to make a return, or for a fraudulent return, those officers have no discretion in the matter, but must invariably impose the penalty. 2 Int. Rev. Rec. 36.

The above Acts of Congress apply as well to suits in the State courts as to those in the Federal courts, but not to Government suits for collecting the tax.

The Collector v. Hubbard, 12 Wall. 1.

Clinkenbeard v. United States, 21 Wall. 65.

The authority of the Commissioner of Internal

Revenue to refund a tax is not exhausted by his rejection of an application to refund, but he may afterwards, under U. S. Rev. Stats. § 3220, allow to a collector the amount recovered against him by suit, and such allowance can be impeached only for fraud or mistake.

Nixon v. United States, 18 Ct. Cl. 448.

Such allowance properly includes costs paid.

United States v. Davis, 54 Fed. Rep. 147.

The defence of failure to take an appeal to the Commissioner is waived, if not pleaded in abatement.

Hendy v. Soule, Deady, 400.

If the plaintiff has accepted, without objection, payment of the amount illegally exacted, he thereby surrenders his right to sue for interest as incidental damages.

Stewart v. Barnes, 153 U. S. 456; 48 Fed. Rep. 281.

A decision, reported by the Commissioner of Internal Revenue in 1871, as to the refunding of certain taxes, to the Secretary of the Treasury for his advisement, under the Treasury Regulations then in force, was held not to be final, within said § 5220.

Stotesbury v. United States, 146 U. S. 196; 23 Ct. Cl. 285.

See *Dupasseur v. United States*, 19 Ct. Cl. 1; *Sybrandt v. United States*, 19 Ct. Cl. 461.

A corporation is not bound to produce its books

to the assessor on an inquiry into the income of its stockholders.

Re Chadwick, 1 Lowell, 439.

Under the Act of 1866, the lien of the income tax related back, upon demand, to the time when the tax was due, but only as to property belonging to the taxpayer when the demand was made.

United States *v.* Pacific Railroad Co., 1 Fed.

Rep. 97; 1 McCrary, 1.

Penalties and Forfeitures. — Upon questions that may arise respecting the penalties imposed by § 29 of this Act, for neglect to make returns and for fraudulent returns, the following considerations are pertinent.

Ex post facto laws, as applied to criminal offences, are constitutionally invalid, but they do not apply to laws intended to protect vested rights of property. Retrospective laws strictly apply only to civil rights and remedies, and are invalid only when they infringe upon rights vested under existing laws. “Every law that is to have an operation before the making thereof, as to commence at an antecedent time, or to save time from the statute of limitations, or to excuse acts which were unlawful, and before committed, and the like, is retrospective.” Chase, J., in *Calder v. Bull*, 3 Dallas, 386. See also

Ex parte Medley, 134 U. S. 160.

United States *v.* 64 Barrels of Spirits, 3 Cliff.
308.

Drexel *v.* Commonwealth, 46 Penn. St. 31.
Kille *v.* Reading Iron Works, 134 Penn. St. 225.
People *v.* Spicer, 99 N. Y. 225.
Cooley on Taxation (2d ed.), p. 291.
Mitchell *v.* Campbell, 19 Oregon, 198.
McLane *v.* Bonn, 70 Iowa, 752.
Demoville *v.* Davidson County, 87 Tenn. 214.

So a contract right under a statute is a vested right which cannot be impaired by a repeal of the statute.

Steamboat Co. *v.* Joliffe, 2 Wall. 450.
Koshkonong *v.* Burton, 104 U. S. 668.

The established rule appears to be that a forfeiture takes place when the offence is committed, although in the early case announcing this rule Judge Story held, in a dissenting opinion, that a forfeiture attached to a thing conveys no property therein to the Government until seizure made or suit brought.

United States *v.* 1960 Bags of Coffee, 8 Cranch, 398.

See United States *v.* The Mars, 8 Id. 417.

It is competent for Congress to impose taxes retrospectively.

Stockdale *v.* Ins. Cos., 20 Wall. 323.

Locke *v.* New Orleans, 4 Wall. 172.

A statute which, after annual settlements, authorized county auditors in Ohio to extend back, for four years, inquiries as to property returnable for taxation, was held constitutional.

Sturges *v.* Carter, 114 U. S. 511.

But penalties added for such previous years are within a constitutional prohibition against retroactive laws.

Gager v. Prout, 48 Ohio St. 89.

Metz v. Hagerty (Ohio), 38 N. E. Rep. 11.

Ryan v. State, 5 Neb. 276.

So penalties which have accrued for non-payment of a tax, but which have been swept away by a repeal of the tax law, cannot be revived by new legislation.

State v. Jersey City, 37 N. J. L. 39.

An additional penalty may lawfully be prescribed for an act previously unlawful.

Mackey v. Holmes, 52 Fed. Rep. 722.

The penalty of one hundred per cent, imposed by the act of 1867 for fraudulent omission of taxable property from a return, could not be collected if the reassessment included a sum not legally taxed, or until the assessor had himself adjudged the omission to be false and fraudulent, and the penalty to have been incurred.

Michigan Central R. Co. v. Slack, Holmes,
231.

When a short return, which is fraudulent, is made, the penalty is to be computed on the whole tax chargeable, although the tax was paid under the fraudulent return. 3 Int. Rev. Rec. 14.

Only one penalty is recoverable for all failures to make the required return prior to the commence-

ment of a suit to recover the penalties for such failure.

United States *v.* Brooklyn City & N. R. Co.,
14 Fed. Rep. 284.

United States *v.* New York Guaranty Co., 8
Ben. 269.

“SECT. 30. The taxes on incomes herein imposed shall be due and payable on or before the first day of July in each year ; and to any sum or sums annually due and unpaid after the first day of July as aforesaid, and for ten days after notice and demand thereof by the collector, there shall be levied in addition thereto the sum of five per centum on the amount of taxes unpaid, and interest at the rate of one per centum per month upon said tax from the time the same becomes due, as a penalty, except from the estates of deceased, insane, or insolvent persons.”

Sect. 30. — The penalty was the same in the Acts of 1867 and of 1870, the time of payment being here changed. In the act of 1865 it was ten per cent without the clause as to interest. Line 6. The words “notice and” were added by the Act of 1865, which struck out the words “for thirty days,”

which followed "unpaid" in the third line in the act of 1864.

"SECT. 31. Any non-resident may receive the benefit of the exemptions hereinbefore provided for by filing with the deputy collector of any district a true list of all his property and sources of income in the United States, and complying with the provisions of section twenty-nine of this Act as if a resident. In computing income he shall include all income from every source, but unless he be a citizen of the United States he shall only pay on that part of the income which is derived from any source in the United States. In case such non-resident fails to file such statement, the collector of each district shall collect the tax on the income derived from property situated in his district subject to income tax, making no allowance for exemptions ; and all property belonging to such non-resident shall be liable to distraint for tax : *Provided*, That non-resident corporations shall be subject to the same laws as to tax as resident corporations, and the collection of the tax shall be made in the same manner as provided for collections of taxes against non-resident persons."

Sect. 31. This is a new provision.

“ SECT. 32. That there shall be assessed, levied, and collected, except as herein otherwise provided, a tax of two per centum annually on the net profits or income above actual operating and business expenses, including expenses for materials purchased for manufacture or bought for resale, losses, and interest on bonded and other indebtedness of all banks, banking institutions, trust companies, savings institutions, fire, marine, life, and other insurance companies, railroad, canal, turnpike, canal navigation, slackwater, telephone, telegraph, express, electric light, gas, water, street railway companies, and all other corporations, companies, or associations doing business for profit in the United States, no matter how created and organized, but not including partnerships.

“ That said tax shall be paid on or before the first day of July in each year ; and if the president or other chief officer of any corporation, company, or association, or in the case of any foreign corporation, company, or association, the resident manager or agent shall neglect or refuse to file with the collector of the internal revenue district in which said corporation, company, or association shall be located or be engaged in business, a statement verified by his oath or affirmation, in such form as shall be

prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, showing the amount of net profits or income received by said corporation, company, or association during the whole calendar year last preceding the date of filing said statement as hereinafter required, the corporation, company, or association making default shall forfeit as a penalty the sum of one thousand dollars, and two per centum on the amount of taxes due, for each month until the same is paid, the payment of said penalty to be enforced as provided in other cases of neglect and refusal to make return of taxes under the internal revenue laws.

“The net profits or income of all corporations, companies, or associations shall include the amounts paid to shareholders, or carried to the account of any fund, or used for construction, enlargement of plant, or any other expenditure or investment paid from the net annual profits made or acquired by said corporations, companies, or associations.

“That nothing herein contained shall apply to States, counties, or municipalities; nor to corporations, companies, or associations organized and conducted solely for charitable, religious, or educational purposes, including fraternal bene-

ficiary societies, orders, or associations operating upon the lodge system and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations and dependents of such members; nor to the stocks, shares, funds, or securities held by any fiduciary or trustee for charitable, religious, or educational purposes; nor to building and loan associations or companies which make loans only to their shareholders; nor to such savings banks, savings institutions, or societies as shall, first, have no stockholders or members except depositors, and no capital except deposits; secondly, shall not receive deposits to an aggregate amount, in any one year, of more than one thousand dollars from the same depositor; thirdly, shall not allow an accumulation or total of deposits, by any one depositor, exceeding ten thousand dollars; fourthly, shall actually divide and distribute to its depositors, ratably to deposits, all the earnings over the necessary and proper expenses of such bank, institution, or society, except such as shall be applied to surplus; fifthly, shall not possess, in any form, a surplus fund exceeding ten per centum of its aggregate deposits; nor to such savings banks, savings institutions, or

societies composed of members who do not participate in the profits thereof, and which pay interest or dividends only to their depositors ; nor to that part of the business of any savings bank, institution, or other similar association having a capital stock, that is conducted on the mutual plan solely for the benefit of its depositors on such plan, and which shall keep its accounts of its business conducted on such mutual plan separate and apart from its other accounts.

“ Nor to any insurance company or association which conducts all its business solely upon the mutual plan, and only for the benefit of its policy holders or members, and having no capital stock, and no stock or shareholders, and holding all its property in trust and in reserve for its policy holders or members ; nor to that part of the business of any insurance company having a capital stock, and stock and shareholders, which is conducted on the mutual plan, separate from its stock plan of insurance, and solely for the benefit of the policy holders and members insured on said mutual plan, and holding all the property belonging to and derived from said mutual part of its business in trust and reserve for the benefit of its policy holders and members insured on said mutual plan.

"That all State, county, municipal, and town taxes paid by corporations, companies, or associations, shall be included in the operating and business expenses of such corporations, companies, or associations."

Sect. 32.—This is substantially a new section. Sect. 120 of the Act of 1864, which imposed a duty of five per cent on dividends in scrip or money, was not materially changed by the later Acts. By § 15 of the Act of 1870 there was to be levied and collected for and during the year 1871 "a tax of two and one half per centum on the amount of all interest or coupons paid on bonds or other evidences of debt issued and payable in one or more years after date, by" a portion of the corporations now named in this section, "and on the amount of all dividends of earnings, income, or gains" declared by them.

Although this is a comparatively new section, the following decisions on the old law may be of value.

It was held,—

That the amount paid by a corporation as a tax under the provisions of the section in the Act of 1870 could not be deducted as an expense of business. 10 Int. Rev. Rec. 57. But that the amount paid as taxes on the capital, circulation, and deposits during the period covered by the return

might be deducted like other expenses. 5 Int. Rev. Rec. 74.

That the amount paid out by an insurance company for reinsurance might be deducted from the gross receipts in ascertaining earnings or profits subject to a tax. 11 Int. Rev. Rec. 122.

That interest paid to depositors by savings banks was a dividend within the meaning of the section. 2 Int. Rev. Rec. 36.

That the dates of the previous and present dividends must be inserted in the return, so that the whole year might be accounted for. Bout. 226.

That banks falling within the proviso of § 110 of the Act of 1864, as amended, were not required to pay any tax; but the dividends of all other banks, etc. were subject to tax. 11 Int. Rev. Rec. 73.

That corporations within the section could not hold their profits in reserve, even if not carried to what was technically known as a fund, without returning and paying a tax as often as once a year, provided that profits so returned and the tax paid were not again to be returned until distributed, when the tax paid might be deducted from the total amount of tax on such dividend; and that the tax was due upon the entire net earnings or profits, whether distributed or undistributed, either as an undistributed sum, or as carried to the account of any fund. 11 Int. Rev. Rec. 10.

That the tax was to be paid whenever and wher-

ever the interest was payable ; that to construe the word " wherever " to mean " at the place where " would be to make the tax sometimes payable abroad, and that the company indebted for money for which bonds were issued must make return of coupons and interest and pay the tax, regardless of the place where interest and coupons were payable. 10 Int. Rev. Rec. 81.

That where bonds were issued by a State, county, city, or town in aid of a railroad, the interest to be paid by it, the tax was to be withheld, although neither bond nor coupon might express the liability of the company, the arrangement being an indorsement of the company's bonds by the State, etc., and that whether the interest was paid by the State, etc., and received from the company, or paid directly by it to the bondholders, was immaterial, and in either case the company was accountable to the Government for the tax. Bout. 254.

That the entire net gains of a railroad company were taxable, and it was not relieved from a return of and a tax upon surplus earnings which might not be set aside in the particular manner mentioned. 3 Int. Rev. Rec. 85. And a tax was to be imposed upon the amount carried to the repair fund. 2 Int. Rev. Rec. 100.

That although the surplus from which the dividend was declared was acquired before the revenue law, yet, if divided after the law went into effect, it was taxable ; and the tax must be withheld from

the entire dividend whenever due and payable, without regard to the time when the profits or earnings were acquired. 2 Int. Rev. Rec. 44, 68.

That, like other taxes, they were payable to the collector of the proper district. 4 Int. Rev. Rec. 156.

That a bank dividend in coin should be reduced to its value in legal tender at the time when and the place where the dividend was payable, and the tax was to be determined upon the currency value thus ascertained. 5 Int. Rev. Rec. 74.

That a tax upon a scrip dividend was to be assessed when the scrip was issued, and the dividend was to be returned at its par value. 5 Int. Rev. Rec. 91.

That the Act of June 30, 1864, did not lay a tax on the income of a non-resident alien, arising from bonds held by him of a railroad company incorporated by States of the Union, and situated in them. Railroad Co. v. Jackson, 7 Wall. 262; 9 Int. Rev. Rec. 113, 139. See notes on page 9.

That the amount paid as premium upon United States bonds purchased by the corporation was not deductible as a loss from gross earnings, as it was a part of the investment. 5 Int. Rev. Rec. 74.

That to get at the amount of taxable gains only such losses as had been ascertained and settled during the period covered by the return should be deducted. 5 Int. Rev. Rec. 74. And that no deduction was to be made on account of a part

of the earnings being the interest upon railroad bonds owned by the corporation, and upon which a tax had been withheld, or on account of tax withheld by other corporations from dividends payable to it. 5 Int. Rev. Rec. 91.

That the law provided that the portion of the premiums returned by mutual life insurance companies to policy holders were not dividends, unless the company paid to the policy holder more than the premiums received; that unless such excess was so paid, no tax was imposed, and that where any such insurance company had a capital stock, and the profits were divided between the stock-holders and the policy holders, the amount paid to the policy holders was exempt from tax, provided it fell within the above rule. 6 Int. Rev. Rec. 139.

That the tax was not imposed upon all funds used for construction, but merely upon profits so used, so that it was not sufficient to show money so expended, but it must be shown that the money was a portion of the profits. The excess of receipts over disbursements was not necessarily profits, unless the disbursements included an outlay for improving or repairing the property sufficient to keep it up to its original value. In determining the amount on which a railroad company should pay a tax, it was necessary to determine the amount of profits during the period, which profits were taxable, whether expended for construction

or retained to be expended. The percentage of depreciation would vary with different railroads, so as to prevent the adoption of any fixed percentage as a proper allowance, and the rule was held to be that all sums expended for the purpose and with the result of keeping the property up to its average value, or its average value at the beginning of the period under consideration, should be allowed as expenses. If any company had failed to expend a sum sufficient to keep its property up to such value, it should be allowed to set aside as not properly included in the profits such sum as would have been expended had such repairs been made. 8 Int. Rev. Rec. 19.

Under the Act of 1870 it was not intended to tax the profits of a railroad corporation during the year 1871, which were not divided but were used for construction.

*Marquette, Houghton, & O. Railroad Co. v.
United States, 123 U. S. 722.*

Where a railroad was in the military possession of the United States during the Civil War, and its rolling stock was in its own possession within the Confederate lines and it distributed dividends in Confederate notes by use of its rolling stock, it was liable to pay a tax on the dividends; and where after the close of the war it applied, with the consent of its stockholders, its surplus earnings to the restoration of its property, and distributed to its

stockholders bonds at a discount in lieu of money, with option to take money, it was held not liable to a tax on the income so applied. *Memphis R. R. Co. v. United States*, 108 U. S. 228. See *Railroad Co. v. United States*, 101 U. S. 543; *Railroad Co. v. Collector*, 100 Id. 595; *United States v. Erie Railway Co.*, 106 Id. 327, 703; *Railroad Co. v. Rose*, 95 Id. 78; *Stockdale v. Insurance Cos.*, 20 Wall. 323; *Barnes v. Railroads*, 17 Id. 294; *United States v. Railroad Co.*, Id. 322; *Erie Railway Co. v. White*, 20 Int. Rev. Rec. 56. As to the "earnings" of a railroad, see further *Little Miami R. R. Co. v. United States*, 108 U. S. 277; *Bailey v. Railroad Co.*, 106 U. S. 109; 22 Wall. 604. As to coupons, see *Improvement Co. v. Slack*, 100 U. S. 648. As to the meaning of "profits used in construction" in the Act of 1864, see *Grant v. Hartford R. R. Co.*, 93 U. S. 225; 9 Blatch. 542.

See further, on matters treated in this section, *United States v. Louisville & N. R. Co.*, 38 Fed. Rep. 829; *United States v. Tilden*, 9 Ben. 368; 24 Int. Rev. Rec. 97; *United States v. Central Nat. Bank*, 24 Fed. Rep. 577; 15 Id. 222; 10 Id. 612; *Cotton Press Co. v. Collector*, 1 Woods, 296; *Metropolitan Railroad Co. v. Slack*, Holmes, 375; *Black v. Sixth Avenue R. R. Co.*, 1 Daly, (N. Y.) 536; *Dollar Savings Bank v. United States*, 19 Wall. 227; *Eastern Kentucky Railway Co. v. Slack*, 26 Int. Rev. Rec. 23; *United States v. Marietta Railroad Co.*, Id. 390; *Erskine v. Milwaukee & St. Paul Railway*

Co., 94 U. S. 619; Elliott *v.* East Pennsylvania R. R. Co., 99 U. S. 573; 25 Int. Rev. Rec. 56; United States *v.* Erie Railway Co., 106 U. S. 327; 24 Int. Rev. Rec. 76; Smedberg *v.* Bentley, 21 Int. Rev. Rec. 38; Concord Railroad Co. *v.* Topliff, Id. 74; Blake *v.* Nat. Banks, 23 Wall. 307, 316; 21 Int. Rev. Rec. 114; Schuylkill Nav. Co. *v.* Elliott, Id. 342; United States *v.* Hazard, 22 Id. 309. As to savings institutions, see San Francisco S. Society *v.* Cary, 2 Sawyer, 333. See cases cited under §§ 27, 28.

“SECT. 33. That there shall be levied, collected, and paid on all salaries of officers, or payments for services to persons in the civil, military, naval, or other employment or service of the United States, including Senators and Representatives and Delegates in Congress, when exceeding the rate of four thousand dollars per annum, a tax of two per centum on the excess above the said four thousand dollars; and it shall be the duty of all paymasters and all disbursing officers under the government of the United States, or persons in the employ thereof, when making any payment to any officers or persons as aforesaid, whose compensation is determined by a fixed salary, or upon settling or adjusting the accounts of such officers or persons, to deduct and withhold the aforesaid tax of two per

centum ; and the pay roll, receipts, or account of officers or persons paying such tax as aforesaid shall be made to exhibit the fact of such payment. And it shall be the duty of the accounting officers of the Treasury Department, when auditing the accounts of any paymaster or disbursing officer, or any officer withholding his salary from moneys received by him, or when settling or adjusting the accounts of any such officer, to require evidence that the taxes mentioned in this section have been deducted and paid over to the Treasurer of the United States, or other officer authorized to receive the same. Every corporation which pays to any employee a salary or compensation exceeding four thousand dollars per annum shall report the same to the collector or deputy collector of his district, and said employees shall pay thereon, subject to the exemptions herein provided for, the tax of two per centum on the excess of his salary over four thousand dollars :

“Provided, That salaries due to State, county, or municipal officers shall be exempt from the income tax herein levied.”

Sect. 33.—The last sentence is new. The clause preceding that sentence is the same in the Act of

1867, but by the Act of 1864 the payment was to be made to the Commissioner of Internal Revenue. The Act of 1867 changed this provision in the Act of 1864 by adding, in the tenth line, "whose compensation is determined by a fixed salary"; by adding, in the seventeenth line, "or any officer withholding his salary from moneys received by him"; and by striking out the following clause, which in the Act of 1864 followed "per centum" in lines 17, 18 of the present Act: "and shall, at the same time, make a certificate stating the name of the officer or person for whom such deduction was made, and the amount thereof, which shall be transmitted to the office of the Commissioner of Internal Revenue, and entered as part of the internal duties."

"SECT. 34. That sections thirty-one hundred and sixty-seven, thirty-one hundred and seventy-two, thirty-one hundred and seventy-three, and thirty-one hundred and seventy-six of the Revised Statutes of the United States as amended are hereby amended so as to read as follows:—

"SECT. 3167. That it shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States, to divulge or make known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer

or producer visited by him in the discharge of his official duties, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return by any person or corporation, or to permit any income return or copy thereof, or any book containing any abstract or particulars thereof, to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return, or any part thereof, or the amount or source of income, profits, losses, or expenditures appearing in any income return; and any offence against the foregoing provision shall be a misdemeanor, and be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employee of the United States he shall be dismissed from office, and be incapable thereafter of holding any office under the Government."

"SECT. 3172. That every collector shall, from time to time, cause his deputies to proceed through every part of his district and inquire after and concerning all persons therein who are

liable to pay any internal revenue tax, and all persons owning or having the care and management of any objects liable to pay any tax, and to make a list of such persons and enumerate said objects.

“SECT. 3173. That it shall be the duty of any person, partnership, firm, association, or corporation, made liable to any duty, special tax, or other tax imposed by law, when not otherwise provided for, in case of a special tax, on or before the thirty-first day of July in each year, in case of income tax on or before the first Monday of March in each year, and in other cases before the day on which the taxes accrue, to make a list or return, verified by oath or affirmation, to the collector or a deputy collector of the district where located, of the articles or objects, including the amount of annual income charged with a duty or tax, the quantity of goods, wares, and merchandise made or sold, and charged with a tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for which such person, partnership, firm, association, or corporation is liable :

"Provided, That if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, articles or objects liable to pay any duty, tax, or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax as aforesaid, then, and in that case, it shall be the duty of the collector or deputy collector to make such list or return, which, being distinctly read, consented to, and signed and verified by oath or affirmation by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person :

"Provided further, That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of

suitable age and discretion, if such be present, otherwise to deposit in the nearest post-office a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law, within ten days from the date of such note or memorandum, verified by oath or affirmation. And if any person on being notified or required as aforesaid shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is false or fraudulent, or contains any undervaluation or understatement, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person, or any other person he may deem proper, to appear before him and produce such books, at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects liable to tax or the returns thereof. The collector may summon any person residing or found within the State in

which his district lies ; and when the person intended to be summoned does not reside and cannot be found within such State, he may enter any collection district where such person may be found, and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned.

" SECT. 3176. When any person, corporation, company, or association refuses or neglects to render any return or list required by law, or renders a false or fraudulent return or list, the collector or any deputy collector shall make, according to the best information which he can obtain, including that derived from the evidence elicited by the examination of the collector, and on his own view and information, such list or return, according to the form prescribed, of the income, property, and objects liable to tax owned or possessed or under the care or management of such person or corporation, company or association ; and the Commissioner of Internal Revenue shall assess all taxes not paid by stamps, including the amount, if any, due for special tax, income or other tax, and in case of any return of a false or fraudulent list or valu-

ation intentionally, he shall add one hundred per centum to such tax; and in case of a refusal or neglect, except in cases of sickness or absence, to make a list or return, or to verify the same as aforesaid, he shall add fifty per centum to such tax. In case of neglect occasioned by sickness or absence as aforesaid, the collector may allow such further time for making and delivering such list or return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax unless the neglect or falsity is discovered after the tax, has been paid, in which case the amount so added shall be collected in the same manner as the tax; and the list or return so made and subscribed by such collector or deputy collector shall be held *prima facie* good and sufficient for all legal purposes."

Sect. 3167. The amended section prescribed the same penalties as are here provided only against any revenue officers divulging "the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties." By the Act of February 8, 1875, ch. 36, § 23, (18 St. at L. 307,) all Acts and parts of Acts punishing offences of an internal revenue officer

or other officer of the Treasury apply to all persons acting under any revenue or customs law, whether such persons are designated or acting as officers or deputies, or persons having the custody or disposition of any public money.

Sect. 3173. — The original section, as amended by 20 St. at L. 330, ch. 125, § 3, is here extended so as to apply to the income tax. The first clause (to first comma) in the second Proviso is new in the present Act.

Sect. 3176. — This section is now extended to include the income tax. In the last sentence, the amendment made by 20 St. at L. 330, ch. 125, § 3, is included, and the words *prima facie* are added.

The penalty of one hundred per cent is constitutional, and under the old law the return need not be wilfully false.

Doll *v.* Evans, 9 Phila. 364.

Savings Bank *v.* Archbold, 15 Blatch. 398; 104 U. S. 708.

The transmission of the lists to the collector apparently terminates the power to add this penalty.

11 Att. Gen. Op. 280.

Upon the right of secrecy, see § 19 of Act of June 30, 1864; 1 Int. Rev. Rec. 4, 6, 19 (column 3), 20; 4 Harvard Law Rev. 193; *ante*, page 47.

Disclosures or admissions, compelled from taxpayers required to testify or make returns as to property, cannot be used as evidence in any Federal court in a criminal or quasi criminal prosecution.

Re Phillips, 10 Int. Rev. Rec. 107.

Landram v. United States, 16 Ct. Cl. 74, 85.

Re Strouse, 1 Sawyer, 605.

Re Lippman, 3 Ben. 95.

United States v. Fordyce, 13 Int. Rev. Rec. 77.

“ SECT. 35. That every corporation, company, or association doing business for profit, shall make and render to the collector of its collection district, on or before the first Monday of March in every year, beginning with the year eighteen hundred and ninety-five, a full return, verified by oath or affirmation, in such form as the Commissioner of Internal Revenue may prescribe, of all the following matters for the whole calendar year last preceding the date of such return :

“ First. The gross profits of such corporation, company, or association, from all kinds of business of every name and nature.

“ Second. The expenses of such corporation, company, or association, exclusive of interest, annuities, and dividends.

“ Third. The net profits of such corporation,

company, or association, without allowance for interest, annuities, or dividends.

“Fourth. The amount paid on account of interest, annuities, and dividends stated separately.

“Fifth. The amount paid in salaries of four thousand dollars or less to each person employed.

“Sixth. The amount paid in salaries of more than four thousand dollars to each person employed, and the name and address of each of such persons and the amount paid to each.”

Sect. 35. The Act of 1870, (16 St. at L. 260,) by § 15, levied a tax of two and one half per cent upon certain corporations; and, by § 16, every person having the care or management of any such corporation was to make return of its income and profits, verified by the oath of its president, cashier, or treasurer, subject to a penalty of \$1,000 for any default in making and rendering such return.

The following English and Canadian decisions may be of some value in the interpretation of this section :—

A corporation was constituted to manage a dock estate by an Act which provided that the moneys received from dues and other sources should be applied to expenses, interest on debts, construction and management, and that the surplus should be applied to a sinking fund for the extinguishment

of the principal of the debts, and that after such extinguishment the rates should be reduced; and that except as aforesaid the moneys should not be applied for any other purpose whatsoever, etc. It was held that under the Income Tax Acts the corporation was liable to an income tax in respect of the surplus, though applicable to the above named purposes only.

Mersey Docks & Harbour Board v. Lucas, 8 App. Cas. 891.

A company carrying on business as iron-founders set apart, in accordance with their articles of association, a sum from their net profits for depreciation of buildings, plant, etc., and claimed, in making a return, under Schedule D of the English Act, of their annual profits or gains, to deduct this amount. It was held that such a deduction was contrary to the Act of 1842, as the amount set aside was in effect an addition to capital.

Forder v. Handyside, 1 Ex. D. 233.

A foreign company earning profits abroad had an agency in London which conducted a branch and earned profits. The dividends were, at the option of the shareholders, payable abroad, or by the London agency. In a certain year the London agency earned an amount of profits which enabled them to pay all dividends demanded of them in that year without requiring or obtaining any remittance from the company abroad. The London agency were assessed for an income tax under

Schedule D of the English Act on the profits earned in the United Kingdom on an average of the three preceding years, the amount on which they were so assessed being less than the amount actually earned by them in that year. They further made a return according to law that no interest, dividends, or other annual payments payable out of or in respect of the stock, funds, or shares of the company had been intrusted to them for payment in the United Kingdom, and appealed against an assessment of the Commissioners whereby they were assessed in respect of the dividends paid by them. It was held that the London agency were intrusted with the payment of dividends in the United Kingdom, within the meaning of 16 & 17 Vict. c. 34, § 10, and that they were liable to be assessed on the full amount of the dividends they so paid in the year, but that since the dividends were payable out of the general earnings of the company, consisting of profits made partly in the United Kingdom and partly elsewhere, and the London agency had already been assessed for an income tax on the former under Schedule D, they ought not to be further assessed under 16 & 17 Vict. c. 34, § 10, and pay income tax in respect of that portion of the dividends which represented profits arising out of the United Kingdom.

Gilbertson v. Fergusson, 5 Ex. D. 57; 7 Q. B.
D. 562.

A life insurance company issued "participating

policies" at an increased premium, according to the terms of which at the end of each quinquennial period "the gross profits" of such policies were thus dealt with: two thirds were returned by way of bonus or abatement of premiums to the holders of such policies then in force; the remaining third went to the company, who bore the whole expenses of the business, the portion remaining after payment of expenses constituting the only profit available for division among the shareholders. It was held that the two thirds returned to the policy holders were "annual profits or gains" and assessable to income tax.

Last v. London Assurance Corporation, 12 Q. B. D. 389; 14 Q. B. D. 239; 10 App. Cas. 438.

The interest arising from investments made by a life insurance company for the purposes of their business, income tax on which had been deducted at its source, exceeded the amount of the profits of the company for the year of assessment. The company had also during the year received interest on investments from which there had been no deduction for income tax. Held that the company were liable to assessment for an income tax in respect of such last mentioned interest.

Clerical, &c. Life Assurance Society v. Carter,
22 Q. B. D. 444.

See further *New York Life Insurance Co. v. Styles*, 14 App. Cas. 381; *Gresham Life Assur-*

ance Society *v.* Styles, 24 Q. B. D. 500; 25 Id. 351; [1892] A. C. 309; Queen *v.* Commissioners of Income Tax, 21 Q. B. D. 313; Bartholomay Brewing Co. *v.* Wyatt, [1893] 2 Q. B. 499; London Bank of Mexico *v.* Aphorpe, [1891] 2 Q. B. 378; Dillon *v.* Haverfordwest Corporation, [1891] 1 Q. B. 575; Anglo-Continental Guano Works *v.* Bell, 38 Sol. Journ. 325. See also 13 Int. Rev. Rec. 33, 65, 73, 97, 98, 117, 169, 177, 185; 14 Id. 33, 57; 12 Id. 157. Ex parte Fairweather, 30 New Bruns. 531; Sullivan *v.* Robinson, 1 Pugs. & B. (New Bruns.) 431; Peters *v.* St. John, 21 Canada Supe. Ct. 674; Phœnix Ins. Co. *v.* Kingston, 7 Ont. 343.

“SECT. 36. That it shall be the duty of every corporation, company, or association doing business for profit to keep full, regular, and accurate books of account, upon which all its transactions shall be entered from day to day, in regular order, and whenever a collector or deputy collector of the district in which any corporation, company, or association is assessable shall believe that a true and correct return of the income of such corporation, company, or association has not been made, he shall make an affidavit of such belief and of the grounds on which it is founded, and file the same with the Commissioner of Internal Revenue; and if said Commis-

sioner shall; on examination thereof, and after full hearing upon notice given to all parties, conclude there is good ground for such belief, he shall issue a request in writing to such corporation, company, or association to permit an inspection of the books of such corporation, company, or association to be made; and if such corporation, company, or association shall refuse to comply with such request, then the collector or deputy collector of the district shall make from such information as he can obtain an estimate of the amount of such income, and then add fifty per centum thereto, which said assessment so made shall then be the lawful assessment of such income."

"SECT. 37. That it shall be the duty of every collector of internal revenue, to whom any payment of any taxes other than the tax represented by an adhesive stamp or other engraved stamp is made under the provisions of this Act, to give to the person making such payment a full written or printed receipt, expressing the amount paid and the particular account for which such payment was made; and whenever such payment is made such collector shall, if required, give a separate receipt for each tax paid by any debtor, on account of payments made to or to be

made by him to separate creditors, in such form that such debtor can conveniently produce the same separately to his several creditors in satisfaction of their respective demands to the amount specified in such receipts; and such receipts shall be sufficient evidence in favor of such debtor to justify him in withholding the amount therein expressed from his next payment to his creditor; but such creditor may, upon giving to his debtor a full written receipt, acknowledging the payment to him of whatever sum may be actually paid, and accepting the amount of tax paid as aforesaid (specifying the same) as a further satisfaction of the debt to that amount, require the surrender to him of such collector's receipt."

APPENDIX.

P. 1. In 28 Am. Law Rev. 808 (soon to be issued), Mr. Robert Sewell discusses these decisions and the constitutionality of the new law at length, treating the earlier statutes as war measures and adverting to the placing of public burdens chiefly upon the rich and the Northern and Eastern portions of the country. See also *Smedberg v. Bentley*, 21 Int. Rev. Rec. 38; and the opinion of Messrs. E. Spencer Miller and William M. Evarts in 13 Int. Rev. Rec. 76. See also 1 Kent Com. 255; 50 Albany Law Journal, 416; 51 id. 19, 22, 65; the article of David A. Wells in The Forum for Jan., 1895, p. 587; also Mr. N. Trickett's article in 29 Am. L. Rev. 73; the arguments of William O. Bartlett and C. Stuart Patterson in The New York Sun of Nov. 27-Dec. 1, 13, 1894; and Artemas H. Holmes's letter in The New York Evening Post of Jan. 29, 1895. The case of *Moore v. Miller*, in which the new law was held constitutional by the Supreme Court of the District of Columbia, is reported in 23 Wash. Law Rep'r (No. 5, Jan. 31, 1895), p. 65.

P. 6. The tax imposed by § 4 of the New Brunswick Act 31 Vict. c. 36, upon "income" was held leviable in respect of the balance of gain over loss

made in the fiscal year, and where no such balance of gain had been made, there was no income or fund which was capable of being assessed. It was also held that there was nothing in the section or context which should induce a construction of the word "income," when applied to the income of a commercial business for a year, otherwise than its natural and commonly accepted sense, as the balance of gain over loss. *Lawless v. Sullivan*, 6 App. Cas. 373, reversing 3 Canada Supe. Ct. 117; 2 Pugs. & B. (New Bruns.) 520. See also *City of Kingston v. Canada Life Assurance Co.*, 19 Ont. 453. For interesting facts and statistics as to the working of the present income tax law in England, see *Whitaker's Almanac* for 1894, pp. 181, 433.

P. 28. The collateral inheritance law has recently been held constitutional in Massachusetts. *Minot v. Winthrop*, 162 Mass. 113.

P. 61. As to charitable and educational institutions, see *Andrews v. Bristol Corporation*, 61 L. J. Q. B. 715; *Income Tax Commissioners v. Pemsel*, [1891] A. C. 581; *St. Andrew's Hospital v. Shearsmith*, 19 Q. B. D. 624; *Needham v. Bowers*, 21 Q. B. D. 436.

P. 72. Upon the question whether the income of a Dominion officer or employee can be taxed for municipal purposes, see *Ex parte Owen*, 4 Pugs. & B. (New Bruns.) 487. See also *Ackman v. Moncton*, 24 New Bruns. 103; *Coates v. Moncton*, 25 New Bruns. 605.

REGULATIONS.

**REGULATIONS RELATIVE TO THE ASSESSMENT,
LEVY, AND COLLECTION OF THE TAX ON IN-
COMES. UNDER THE PROVISIONS OF THE ACT
OF CONGRESS IN EFFECT AUGUST 28, 1894.**

**TREASURY DEPARTMENT,
OFFICE OF INTERNAL REVENUE,
Washington, December 13, 1894.**

I.

The Act of Congress entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," in effect August 28, 1894, provides, in section 27, that "from and after the first day of January, eighteen hundred and ninety-five, and until the first day of January, nineteen hundred, there shall be assessed, levied, collected, and paid annually upon the gains, profits, and income received in the preceding calendar year by every citizen of the United States, whether residing at home or abroad, and every person residing therein, whether said gains, profits, or income be derived from any kind of property, rents, interest, dividends, or salaries, or from any profession, trade, employment, or vocation, carried on in the United States or elsewhere, or from any other source whatever, a tax of two per centum on the amount so derived over and above four thousand dollars, and a like tax shall be levied, collected, and paid

annually upon the gains, profits, and income from all property owned and of every business, trade, or profession carried on in the United States by persons residing without the United States."

And that the tax therein provided for shall be assessed by the Commissioner of Internal Revenue, and shall be collected and paid upon the gains, profits, and income for the year ending the 31st day of December next preceding the time for levying, collecting, and paying said tax.

The first taxable year under the provisions of the law is the calendar year 1894, and the tax on incomes due and payable on or before the 1st day of July, 1895, shall be computed on the taxable incomes received in said year 1894, from the 1st day of January to the 31st day of December, both days included.

II.

ANNUAL RETURNS OF PERSONS,

TO BE MADE AND DELIVERED TO THE COLLECTOR ON OR BEFORE THE FIRST MONDAY OF MARCH IN EACH YEAR.

Under the provisions of said Act, it shall be the duty of all persons of lawful age, having an annual income of more than \$3,500, computed on the basis prescribed by said Act, to make and render a list or return on or before the first Monday of March in each year, in such form and manner as may be directed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to the collector or deputy collector of the district in which they reside, of the amount of their income, gains, or profits for said year.

All guardians, trustees, executors, administrators, agents, receivers, and all persons or corporations acting in any fiduciary capacity, shall make and render a list or return to the

collector or deputy collector of the district in which such persons or corporations acting in a fiduciary capacity reside or do business, of the amount of the income, gains, or profits of any minor, or person for whom they act.

The annual returns of all persons liable by law to make and render a return, and the returns of all guardians, and persons or corporations acting in any fiduciary capacity, will be made on Form 365, and must be verified by oath or affirmation of the party making the same. Collectors are especially enjoined by the law to require every list or return to be verified by the oath or affirmation of the party rendering it. The affidavit may be made before the collector or deputy collector of the district, or before some officer having a seal and authorized by law to administer oaths. The collector, in all cases, must be satisfied of the authority of such officer before whom the affidavit is made.

Persons having less than \$3,500 annual income are not required to make such return, but in all cases where the annual income of any person exceeds the sum of \$3,500, whether it reaches the taxable limit or not, the list or return on Form 365 shall be made by such person, duly verified, and forwarded to the collector of his district.

The collector or deputy collector may increase the amount of any list or return, if he has reason to believe that the same is understated, and the person or corporation whose list is thus increased may be permitted to prove the amount of income liable to be assessed, but such proof shall not be considered as conclusive of the facts, and no deductions claimed in such cases shall be made or allowed until approved by the collector or deputy collector.

The annual returns of all persons, on Form 365, and of all corporations, companies, and associations, on Form 366, made on or before the first Monday in March of each year, will be forwarded by collectors to the Commissioner of Internal Revenue on or before the 15th of April following. Said

returns, and all matters relating thereto, must be securely sealed, in envelopes or packages, by collectors forwarding the same, and, with all returns of delinquents made and forwarded by collectors, and all data relating to returns of incomes, will be filed and securely and permanently retained in the office of the Commissioner of Internal Revenue.

GAINS, PROFITS, AND INCOME TO BE INCLUDED FOR TAXABLE PURPOSES IN THE ANNUAL RETURNS OF PERSONS.

In estimating the gains, profits, and incomes of any person for the purposes of taxation, under the provisions of section 28 of said Act, there shall be included :—

1. All incomes derived from interest upon notes, bonds, and other securities, except such bonds of the United States, the principal and interest of which are by the law of their issuance exempt from all Federal taxation.
2. Profits realized within the year from sales of real estate purchased within two years previous to the close of the year for which income is estimated.
3. Interest received or accrued upon all notes, bonds, mortgages, or other forms of indebtedness bearing interest, whether paid or not, if good and collectible.
4. The amount of all premium on bonds, notes, or coupons.
5. The amount of sales of live stock, sugar, cotton, wool, butter, cheese, pork, beef, mutton, or other meats, hay and grain, or other vegetable or other productions, being the growth or produce of the estate of such person, less the amount expended in the purchase or production of said stock or produce, and not including any part thereof consumed directly by the family.
6. Money, and the value of all personal property acquired by gift or inheritance.
7. All other gains, profits, and income derived from any source whatever, except that portion of the salary, compen-

sation, or pay received for services in the civil, military, naval, or other services of the United States, including Senators, Representatives, and Delegates in Congress, from which the tax has been deducted.

8. Where the salary or other compensation paid to any person in the employment or service of the United States shall not exceed the rate of \$4,000 per annum, or shall be by fees, or uncertain or irregular in the amount or in the time during which the same shall have accrued or been earned, such salary or other compensation shall be included in estimating the annual gains, profits, or income of the person to whom the same shall have been paid.

DEDUCTIONS TO BE MADE IN COMPUTING INCOMES OF PERSONS.

Section 28 further provides that in computing incomes there shall be deducted: —

1. The necessary expenses actually incurred in carrying on any business, occupation, or profession.
2. All interest due or paid within the year by such person on existing indebtedness.
3. All national, State, county, school, and municipal taxes, not including those assessed against local benefits, paid within the year, shall be deducted from the gains, profits, or income of the person who has actually paid the same, whether such person be owner, tenant, or mortgagor.
4. Losses actually sustained during the year, incurred in trade, or arising from fires, storms, or shipwreck, and not compensated for by insurance or otherwise.
5. Debts ascertained to be worthless, but excluding all estimated depreciation of values and losses within the year on sales of real estate purchased within two years previous to the year for which income is estimated.

NO DEDUCTION FOR IMPROVEMENTS.

Provided, That no deduction shall be made for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate.

**DIVIDENDS ON STOCKS NOT INCLUDED IF PAID THEREON
BY CORPORATIONS.**

Provided also, That in computing the income of any person, corporation, company, or association there shall not be included the amount received from any corporation, company, or association, as dividends upon the stock of such corporation, company, or association, if the tax of two per centum has been paid upon its net profits by said corporation, company, or association, as required by this Act.

ONLY ONE DEDUCTION OF \$4,000 FOR EACH FAMILY.

Provided further, That only one deduction of \$4,000 shall be made from the aggregate income of all the members of any family, composed of one or both parents, and one or more minor children, or husband and wife ; that guardians shall be allowed to make a deduction in favor of each and every ward, except that in case where two or more wards are comprised in one family and have joint property interests the aggregate deduction in their favor shall not exceed \$4,000.

RETURNS OF NON-RESIDENTS.

It is provided in section 31 of this Act that "any non-resident may receive the benefit of exemption provided for in said Act by filing with the deputy collector of any district a true list of all his property and sources of income in the

United States, and otherwise complying with the provisions of section 29 of this Act, as if a resident."

In computing income, such non-resident shall include all income from every source, but unless he be a citizen of the United States he shall only pay on that part of the income which is derived from any source in the United States.

In case such non-resident fails to file such statement, the collector of each district shall collect the tax on the income derived from the property of such non-resident situated in his district subject to income tax, making no allowance for exemption, and all property belonging to such non-resident shall be liable to distraint for said tax.

Non-resident corporations are subject to the same laws as to taxes as resident corporations, and the collection of the taxes shall be made in the same manner as provided for in the collection of taxes against non-resident persons.

A non-resident, in order to secure the exemption of \$4,000 provided by law, must make his list or return on Form 365, duly verified by his oath or affirmation, and deliver the same to the deputy collector of any district on or before the first Monday of March in each year.

WHEN COLLECTORS MAY MAKE RETURN.

1. If any person liable to pay an income tax for himself or others shall fail to make and deliver the return required by law, but shall consent to disclose the particulars of any business or occupation liable to pay such tax, it shall be the duty of the collector or deputy collector to make such list or return, which, being distinctly read and consented to, signed, and verified by oath or affirmation by the person liable to make said return, the same may be received as the list or return of such person.

2. In case any such person having a taxable income shall neglect or refuse to make or render such list or return, or

shall render a wilfully false or fraudulent return, it shall be the duty of the collector or deputy collector to make such list, according to the best information he can obtain by the examination of such person, or any other evidence.

When duly certified by the collector, the said list thus prepared shall be the return of said person, upon which his tax shall be extended and assessed.

In case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or deputy collector shall call for the annual list or return, or on the date when such list should be returned, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age or discretion, if such be present, otherwise to deposit in the nearest post-office, a notice addressed to such person, requiring him or her to render such collector or deputy collector the list or return required by law within ten days from the date of such notice, verified by oath or affirmation, and if any person on being notified or required as aforesaid shall refuse or neglect to render such list or return within the time required, or delivers any return which, in the opinion of the collector, is false or fraudulent, or contains any undervaluation or understatement, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relative to the business of such person, or any other person he may deem proper, to appear before him and produce such books at the time or place named in the summons, and to give testimony or answer interrogatories under oath respecting any objects liable to tax or returns thereof. The collector may summon any person found or residing within the State in which his district lies. When the person intended to be summoned does not reside and cannot be found within the State, he may enter any collection district in which the person is to be

found and there make the examination herein authorized, and to this end he may there exercise all authority which he might lawfully exercise in the district for which he was commissioned.

The notice above required may be in substantially the same form as the notice hereinafter prescribed relative to parties charged with failure, neglect, or refusal to make true and correct annual returns. The party who serves the notice shall make a sworn return of service upon the back of the copy thereof, which copy and return shall be filed in the office of the collector of the district in which said person resides or is served.

**PENALTY FOR NEGLECT OR REFUSAL TO MAKE ANNUAL
RETURN, AND FOR FALSE OR FRAUDULENT ANNUAL
LIST RETURNED.**

In all cases of wilful neglect or refusal to make and render a list or return as prescribed by law, it shall be the duty of the collector or deputy collector of the district to make such list, and to add fifty per cent as a penalty to the amount of tax due on such list. In all cases of a wilfully false or fraudulent list or return having been rendered, it shall be the duty of the collector or deputy collector to add one hundred per cent as a penalty to the amount of tax ascertained to be due ; the tax and the additions thereto as a penalty to be assessed and collected in the manner provided for in other cases of wilful neglect or refusal to render a list or return, or for rendering a false or fraudulent list or return.

No penalty shall be assessed upon any person or corporation, company, or association for such neglect or refusal, or for making or rendering a wilfully false or fraudulent return, except after reasonable notice of the time and place of hearing, so as to give the person charged the opportunity to be heard.

Before assessing a penalty upon any person for neglect or refusal to make the annual return required by law, or for making or rendering a false or fraudulent return, the collector or deputy collector making said return shall cause a notice, in form substantially as follows, to be served upon such person by delivering it or causing it to be delivered to him in hand, or by leaving it or causing it to be left at his usual place of abode, or by mailing or causing the same to be mailed to him at the post office from which he receives his mail, at least ten days prior to the day of the hearing:—

FORM 369.

To —— of ——, in the county of ——, and State of ——: You are hereby notified to appear at ——, in the county of ——, and State of ——, on the —— day of ——, 18—, at —— o'clock in the —— noon, and show cause, if any you have, why the penalties prescribed by law shall not be assessed against you for neglect (or for refusal if it be a case of refusal, or for rendering a wilfully false or fraudulent list or return, if such has been rendered) to make and render a true and correct return of your gains, profits, or income for the year 18—.

Dated at ——, this —— day of ——, 18—.

Collector (or Deputy Collector) District of ——.

The party who serves the notice should make a sworn return of service upon the back of the copy thereof, which return may be in substance as follows:—

I certify that on the —— day of ——, 18—, I gave in hand to the within named ——, or I left at his last and usual place of abode, or I mailed to him at the post-office from which he receives his mail, an original notice of which the within is a true copy.

Subscribed and sworn to this —— day of ——, 18—, before me.

The copy, with return of service thereon, shall be filed in the office of the collector of the district wherein such hearing is to be had. In case the return is to be made by the guardian, trustee, executor, or administrator, or by the attorney, agent, or partner of a non-resident or alien, or by any person or corporation acting in any other fiduciary capacity, the notice should be served upon him (or it) instead of upon his (or its) ward or *cestui que trust*, and there may be a change in the phraseology of the notice and return suited to the circumstances of the case.

Any person or corporation in his behalf, or in any fiduciary capacity, shall be permitted to declare under oath, in the form and manner prescribed in the affidavit designated as Affidavit No. 1, on Form 365, that he, or his (or its) ward or beneficiary was not possessed of an income of \$4,000 liable to be assessed according to the provisions of said act; or may declare in Affidavit No. 2, on said form, that he, or his (or its) ward or beneficiary has been assessed and has paid an income tax elsewhere in the same year under the authority of the United States upon all his (or its) income, gains, or profits for which he (or it) is liable as such fiduciary.

If the collector or deputy collector shall be satisfied of the truth of the declaration, such person or ward thereof shall be exempt from the income tax in said district for that year.

In cases where the neglect to make the return required by law is occasioned by sickness, or necessary absence of the person required by law to make such return from his usual place of abode, the collector may allow such further time for making and delivering such return as he may deem necessary, not exceeding thirty days. Before extending the time for making and delivering such return, collectors should be informed by affidavit of such persons, or other evidence, that the failure to make or deliver such return was due solely to one or both of the causes above mentioned.

The collector of internal revenue is authorized under section 3173, Revised Statutes, as amended by this Act, to issue

his summons in case of refusal or neglect to make the returns, or in case of false or fraudulent returns, summoning any person having possession, custody, or care of books of accounts containing entries relating to the business of the person refusing to make such return, or rendering such false or fraudulent return, to appear before him and to produce such books at the time and place mentioned in the summons, and to give testimony, under oath, respecting all sources of incomes or profits of such person refusing or neglecting to make the said return.

The manner of service of summons is set forth in section 3174 of the Revised Statutes.

III.

CORPORATIONS.

TAX ON NET PROFITS OR INCOMES OF CORPORATIONS.

It is provided by section 32 of said Act that "there shall be assessed, levied, and collected annually a tax of two per centum on the net profits or incomes above actual operating and business expenses, including expenses for materials purchased for manufacture or bought for resale, losses and interest on bonded and other indebtedness of all banks, banking institutions, trust companies, savings institutions, fire, marine, life, and other insurance companies, railroad, canal, turnpike, canal navigation, slackwater, telephone, telegraph, express, electric light, gas, water, street railway companies, and all other corporations, companies, or associations doing business for profit in the United States, no matter how created and organized."

The law includes all corporations, companies, and associations, both resident and foreign, doing business for profit in the United States, except only such corporations, companies,

and associations as are specifically enumerated in this Act as not liable to such taxation.

The exemption of \$4,000 allowed by law to individuals does not apply to corporations, associations, or companies. The entire net profits or incomes of such organizations doing business for profit are subject to an annual tax of two per cent.

Partnerships, as such, are not liable to taxation of firm or partnership profits or income, but each individual member of the partnership shall include his share of the partnership profits, gains, or income in his individual list, where he is required by law to make return of his income for taxation.

Non-resident corporations are subject to the same laws as to taxation as resident corporations, and the collection of the tax shall be made in the same manner as provided for collection of taxes against non-resident persons. In computing income for taxation, non-resident corporations shall include in their annual returns the entire profits or income of such corporations derived from all business conducted in the United States, deducting the operating and business expenses incurred in conducting such business.

ANNUAL RETURNS OF CORPORATIONS.

Under the provisions of section 35 of said Act, every corporation, company, or association doing business for profit, shall make and render to the collector of its collection district on or before the first Monday of March in each year, beginning with the year 1895, a full return, verified by oath or affirmation of its president or other chief officer, in such form as the Commissioner of Internal Revenue may prescribe, of the following matters for the whole calendar year last preceding the date of such return:—

First. The gross profits of such corporation, company, or association, from all kinds of business of every name and nature.

Second. The expenses of such corporation, company, or association, exclusive of interest, annuities, and dividends.

Third. The net profits of such corporation, company, or association, without allowance for interest, annuities, or dividends.

Fourth. The amount paid on account of interest, annuities, and dividends, stated separately.

Fifth. The amount paid in salaries of \$4,000 or less to each person employed.

Sixth. The amount paid in salaries of more than \$4,000 to each person employed, and the name and address of each of such persons, and the amount paid to each.

The return required under the above named provisions will be made on Form No. 366, and shall be verified by the oath or affirmation of the president, cashier, manager, or managing agent of the corporation making said return. The oath or affirmation required shall be made before a collector or deputy, or some officer with a seal, who is authorized by law to administer oaths, and said return shall be delivered to the collector or deputy collector of internal revenue in the district in which the principal office or place of business of such corporation is situated, or mailed to the collector of said district in time to reach him, on or before the first Monday of March in each year.

The first return made by corporations under the provisions of said act shall be computed on the net profits or income of the corporation making said return, received in the year 1894, from the 1st day of January to the 31st day of December, both days included.

Operating and Business Expenses of Corporations. — In the preparation of annual returns of corporations on Form 366, the operating and business expenses to be deducted from the gross receipts from all sources shall include: —

1. Interest paid or accrued within the year on bonded or other indebtedness of such corporation.

2. Losses actually sustained during the year, arising from

fires, storms, or shipwreck, and not compensated for by insurance or otherwise, specifying the character and amount of each loss.

3. State, county, or municipal taxes actually paid during the year, not including assessments for local benefits.

4. Salaries, compensation, or pay of officers or other persons employed during the year and actually paid.

5. Rents or necessary repairs, but not including any amount used for construction, enlargement, or betterment of plant.

6. Other necessary business expenses, not above enumerated, which must be fully set forth in the return, designating not only the amount of such expenses, but the purpose for which each expenditure was made.

Net Profits of Corporations. — The net profits or income of all corporations, companies, or associations shall include:—

1. The amount of interest, annuities, dividends, and any other sums paid to stockholders or shareholders.

2. The amount of undivided profits on hand, or carried to the account of surplus or any other fund.

3. The amount used for construction.

4. The amount used for enlargement, betterment, or permanent improvement of plant.

5. Any and all expenditures or investments paid from any net annual profits.

The net annual profits of corporations, as well as the entire gross receipts thereof, and the deductions for operating and business expenses, shall be fully extended on pages 2 and 3 of Form No. 366, as in said form provided, and all questions contained on page 3 of said form must be carefully and correctly answered, and verified by oath of the president or other chief officer of said corporation.

BOOKS OF CORPORATIONS.

It is provided in said Act, section 36, that "it shall be the duty of every corporation, company, or association, doing

business for profit, to keep full, regular, and accurate books of account, in which all transactions shall be entered from day to day in regular order. Whenever the collector or deputy collector of the district in which any corporation, company, or association shall be assessable, shall believe that a true and correct return of the income of such corporation, company, or association has not been made, he shall make an affidavit of such belief, and of the grounds on which it is founded, and file the same with the Commissioner of Internal Revenue ; and if said Commissioner shall, on examination thereof, and after full hearing, upon notice given to the parties, conclude there are good grounds for such belief, he shall issue a request in writing to such corporation, company, or association to permit an inspection of the books of such corporation, company, or association to be made."

" If such corporation, company, or association shall refuse to comply with such request, then the collector or deputy collector of the district shall make from such information as he can obtain an estimate of the amount of such income, and then add fifty per centum thereto, which said assessment so made shall then be the lawful assessment of such income."

The books required by this section shall be so kept, arranged, and balanced as to show the gross receipts, operating or business expenses, and net profits of the corporations, associations, or companies for each calendar year, beginning on the 1st day of January and ending on the 31st day of December of said year.

When such corporation, company, or association refuses to comply with the request issued by the Commissioner of Internal Revenue, it shall be the duty of the collector to summon the president, or other officer of such corporation, company, or association, or any other person having possession, custody, or care of the books of said corporation, to appear before him, and to produce such books, at the time and place named in the summons, and to give testimony, and answer interrogatories on oath respecting them; and from

the information thus gained the collector may make the statement of the amount of such income, adding the prescribed penalty thereto.

**PENALTY FOR FAILURE OF CORPORATION TO MAKE ANNUAL
RETURN, AND FOR FALSE OR FRAUDULENT RETURN.**

Under the provisions of section 32 of said Act, "if the president or other chief officer of any corporation, company, or association, and in case of any foreign corporation, company, or association the resident manager or agent, shall neglect or refuse to file with the collector of internal revenue for the district in which said corporation, company, or association shall be located or be engaged in business, a statement verified by oath or affirmation, in such form as shall be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, showing the amount of net profits or income received by such corporation, company, or association during the whole calendar year last preceding the date of filing said statement, the corporation, company, or association making default shall forfeit as a penalty the sum of one thousand dollars and two per centum on the amount of taxes due for each month until the same is paid, the payment of such penalty to be enforced as provided for in other cases of neglect or refusal to make return of taxes under internal-revenue laws."

According to the provisions of section 3176 of the Revised Statutes, as amended by said Act, when any corporation, company, or association refuses or neglects to render a list or return, or renders a false or fraudulent return or list, the collector or any deputy collector shall make, according to the best information which he can obtain, including that derived from the evidence elicited by the examination of the collector, and on his own view and information, such list or return, according to the form prescribed, of the income liable

to tax of such corporation, company, or association, and the Commissioner of Internal Revenue shall assess all income tax, and in case of any return of a false or fraudulent list or valuation intentionally he shall add one hundred per cent to such tax; and in case of a refusal or neglect, except in cases of sickness or absence, to make a list or return, or to verify the same as aforesaid, he shall add fifty per cent to such tax.

The penalties herein provided shall not be assessed upon any corporation, company, or association until after reasonable notice of the time and place of hearing has been given to the president or other chief officer of such delinquent corporation, so as to give said corporation an opportunity to be heard by its officers or agents.

The notice herein required may be substantially in the form prescribed in the case of persons for similar neglect or refusal, and served, returned, and filed in the same manner as in such cases of personal delinquency.

EXEMPT CORPORATIONS.

By the terms of said act, nothing therein contained shall apply to,—

1. States, counties, or municipalities.
2. Corporations, companies, or associations organized and conducted solely for charitable, religious, or educational purposes, including fraternal beneficiary societies, orders, or associations operating upon the lodge system and providing for payment of life, sick, and other benefits to the members of such societies, orders, or associations, and dependents of such members.
3. The stocks, shares, funds, or securities held by any fiduciary or trustee for charitable, religious, and educational purposes.
4. Building or loan associations or companies which make loans only to their shareholders.

5. Savings banks and savings institutions or other societies which shall, —

First. Have no stockholders or members except depositors and no capital except deposits.

Secondly. Which shall not receive deposits to the aggregate amount in any one year of more than \$1,000 from the same depositor.

Thirdly. Which shall not allow an accumulation or total of deposits by any one depositor exceeding \$10,000.

Fourthly. Which shall actually divide and distribute to its depositors ratable to deposits all their earnings over the necessary and proper expenses of such banks and institutions or societies, except such as shall be applied to surplus.

Fifthly. Which shall not possess in any form a surplus fund exceeding ten per cent of its aggregate deposits.

6. Such savings banks, savings institutions, or societies composed of members who do not participate in the profits thereof, and which pay interest or dividends only to their depositors.

7. That part of the business of any savings bank, institution, or other similar association having a capital stock that is conducted on a mutual plan solely for the benefit of its depositors on such plan, and which shall keep its accounts of its business conducted on such mutual plan separate and apart from its other accounts.

8. Any insurance company or association which conducts all its business solely upon the mutual plan, and only for the benefit of its policy holders or members, and having no capital stock, and no stock or shareholders, and holding all property in trust and in reserve for its policy holders or members.

9. That part of the business of any insurance company, having a capital stock and stock and shareholders, which is conducted on the mutual plan, separate from its stock plan of insurance and solely for the benefit of the policy holders and members insured on such mutual plan, and holding all prop-

erty belonging to and derived from said mutual part of its business in trust and reserve for the benefit of its policy holders and members insured on such mutual plan.

The exemption extended in the above named provisions to corporations, companies, or associations, is intended for the benefit of the depositors, shareholders, and other beneficiaries of such corporations, companies, or associations. The corporations, as such, and all stockholders therein who own such stock as investment for capital or for speculative purposes, are not the intended beneficiaries of this exemption.

Collectors should carefully examine the articles of association, or charter, and business methods of all corporations claiming exemption, and where such are found to be operating upon any plan not specifically enumerated in the law extending such exemption, the collector will proceed to make return, if not made by such corporation, of the profits and income of such corporation, and to enforce the collection of taxes thereon, as in the case of other corporations.

IV.

INSTRUCTIONS RELATIVE TO COMPUTING INCOMES FOR TAXATION.

1. The income tax must be paid to the collector or deputy collector in the district in which the taxpayer's annual income list is returned.

2. Expenses for medical attendance, store accounts, family supplies, wages of domestic servants, cost of board, room, or house rent for family or personal use, are not expenses that can be deducted from the gross profits or income in making annual returns. It was manifestly the legislative intention that the \$4,000 exempt from the payment of the income tax should cover all the above enumerated expenses, and all personal expenses for the maintenance of the family and

household of the taxpayer receiving the benefit of the exemption.

3. Only one deduction of \$4,000 can be allowed from the aggregate incomes of all the members of any family composed of parents, or parent, and minor children. It is not essential that the children live with the parents. A husband and wife are regarded as members of the same family, though living separately, unless separated by divorce or other operation of law, so as to break up the family relations. Where separate wards are not comprised in one family, guardians are allowed to make a deduction in favor of each and every ward. The parent, as natural guardian for a minor child, is required to make return for him, but where any other guardian or trustee has been appointed, return should be made by such guardian or trustee. If the minor has no guardian or trustee, he should make return himself. If he refuses or neglects to make return, the same must be made by the collector.

4. The national, State, county, school, and municipal taxes deductible from incomes comprise such internal-revenue taxes as have not been included in the expenses of the business, and all such State, county, school, and municipal taxes as are assessed ratably upon all persons liable to such assessment; but assessments made upon the real estate of a particular locality on account of street improvements, sewerage, street grade, or other improvements intended to benefit the particular property included in said locality, are not considered as taxes which may be deducted from incomes.

5. The interest on all bonds of the United States shall be returned as income by the person, corporation, company, or association owning or holding such bonds, except the interest on bonds of the funded loan of 1891, continued at two per cent; and the bonds of the four per cent funded loan of 1907; and the bonds of the five per cent funded loans of 1904; all of which are by the law of their issuance exempt, both as to principal and interest, from all Federal taxation.

6. In estimating the amount of taxable income, only such

losses as shall have been actually suffered, and the amount of which has been definitely ascertained during the year covered by the return, can be deducted from the gross profits for that year. No deduction will be allowed for any losses not specifically described and set forth in the annual return of the person or corporation claiming the deduction.

7. Non-residents are not entitled to the exemption of \$4,000, or to any exemption whatever, unless they make out their annual lists and returns, duly verified by oath or affirmation, and deliver the same to the collector or deputy of the district wherein their property or business from which income is derived is situated, in the time prescribed in the case of residents.

8. Persons receiving fees or emoluments for professional or other services, as in the case of physicians or lawyers, should include all actual receipts for services rendered in the year for which return is made, together with all unpaid accounts, charges for services, or contingent income due for that year, if good and collectible.

9. Costs of suits and other legal proceedings arising from ordinary business may be treated as other expenses of such business, and may be deducted from the gross profits thereof for the year only in which such proceedings were had and determined.

10. The annual return of merchants and manufacturers of their gains, profits, or income should cover the business of the year from the 1st day of January to the 31st day of December in the year for which return is made, and their books of account, stock records, and inventories should be kept and taken at such time and in such manner as to clearly show the gross profits, business expenses, net profits or income for the year ending at the close of business hours on the 31st day of December.

11. The interest accrued during the year on notes, bonds, or other evidences of indebtedness, if good and collectible at the end of the year, should be returned as income, whether

actually collected or not. Dividends and interest payable in 1894 should be returned as income for that year, no matter when declared.

12. Debts which were contracted during the year 1894, but found in said year to be absolutely worthless, may be deducted from the income of the creditor in his annual return for said year, but such debts cannot be considered or returned as worthless until after legal proceedings to recover the same have proved fruitless, or it clearly appears that the debtor is insolvent, and that proceedings to collect the debt would avail nothing. In making the deduction for worthless debts, the person claiming the same must set forth in his return that the facts as above stated exist in connection with the debt returned as worthless. No debts contracted prior to the year for which return is made can be deducted.

13. No deduction can be made because of the diminished value, actual or estimated, of real estate, nor of stocks, bonds, or other personal property, while owned by the person making the return; nor for estimated depreciation of mines by the process of mining or otherwise. Rent from mines, or royalty thereon, is income, and should be included in annual returns.

14. Collectors should distribute, by mail or otherwise, blank Forms 365 to all persons in their respective districts having an annual income of more than \$3,500, and to persons whose incomes may be supposed to reach more than said amount, and blank Forms 366 to all corporations doing business within their respective districts, as early as practicable after the 1st day of January in each year; but the failure of persons or corporations to receive such blanks, or the failure to receive any notice that such returns should be made, or that any act enjoined by law should be complied with, can not be deemed a valid excuse for not making such return, or not complying with the provisions of law in the time and manner prescribed, and will not prevent or reduce the penalties imposed by law for such failure or neglect. Persons

or corporations not supplied with blank forms for annual returns should apply for them to the collector.

V.

TAX ON SALARIES OF GOVERNMENT OFFICERS AND EMPLOYEES.

Section 33 of the said Act provides "That there shall be levied, collected, and paid on all salaries of officers, or payments for services to persons in the civil, military, naval, or other employment or service of the United States, including Senators and Representatives and Delegates in Congress, when exceeding the rate of \$4,000 per annum, a tax of two per centum on the excess above the said \$4,000 : *Provided*, That salaries due to State, county, or municipal officers shall be exempt from the income tax herein levied."

Where the salary or compensation paid to any person in the service of the United States does not exceed the rate of \$4,000 per annum, or does not reach that sum in the calendar year, or is paid in fees, or is uncertain or irregular in amount or in the time during which the same was earned or has accrued, such salary or compensation shall be included in estimating the annual gains or income of the person to whom the same was paid, and shall be entered on his annual return (Form No. 365) to the collector with his other sources of income.

All salaries or compensation paid to officers or persons in the employ of the Government of the United States in and for the calendar year 1894 shall be included in the annual returns to collectors, on Form 365, of such officers and persons, in statements of gains, profits, and incomes subject to income tax for that year.

All salaries paid by States, counties, or municipalities to their public officers, whether paid in fixed amounts or by

fees, are wholly exempt from income tax, and should not be included in the annual list or return of any person.

DUTIES OF DISBURSING OFFICERS.

"It shall be the duty of all paymasters and all disbursing officers under the Government of the United States, or persons in the employ thereof, when making any payment to any officers or persons as aforesaid, whose compensation is determined by a fixed salary, or upon settling or adjusting the accounts of such officers or persons, to deduct and withhold the aforesaid tax of two per cent; and the pay roll, receipts, or account of officers or persons paying such tax as aforesaid shall be made to exhibit the fact of such payment."

No deduction for tax will be made by paymasters or disbursing officers, in the payment of the salary of any officer or person in the employment of the United States Government, where the compensation of such officer or person is not by a fixed salary exceeding \$4,000 per annum.

Paymasters and disbursing officers will deduct and withhold a tax of two per cent from all salaries and payments of every kind made in money to officers or other persons in the civil, military, naval, and any other employment in the service of the United States, including Senators and Representatives and Delegates in Congress, upon the excess of such salaries over the rate of \$4,000 per annum.

Paymasters and disbursing officers of the Government will make no deduction for taxes from the salary or pay of any officer or person in the employ of the United States for the year 1895, or thereafter, until the amount paid to any such officer or Government employee on account of such salary or employment has reached, in the aggregate for that calendar year, the sum of \$4,000, when, from the first payment on the excess of said amount, or any part thereof, the paymaster or disbursing officer making the payment shall deduct and

withhold the tax of two per cent on the entire amount of said excess of salary or compensation payable to such officer or employee for said year. The excess upon which the tax of two per cent is payable shall be ascertained by deducting the sum of \$4,000 from the fixed annual salary or compensation.

The disbursing officer shall, when required, give to each person from whom the tax aforesaid is withheld a receipt in full for the amount withheld by him.

The amount withheld as aforesaid shall be paid by the disbursing officer withholding the same, within thirty days after the receipt thereof, to the collector or a deputy collector of internal revenue for the district in which such disbursing officer resides or in which such salary is paid or payable, and the collector shall receipt him therefor, and such receipt shall be sufficient evidence to the accounting officers of the Treasury Department when auditing the accounts of paymasters or disbursing officers, or any officer withholding his salary for moneys received by him, or when settling or adjusting the accounts of any such officer, that said taxes have been deducted and paid over to the officer of the United States authorized to receive the same.

All paymasters and disbursing officers of the United States Government who shall withhold the tax aforesaid from the salary or compensation of any officer or employee of the Government shall, on the 1st day of each month, render a true statement of the amount of such tax, with the names and official designations of the persons paying the same, and the amount paid by each in the preceding month, to the Commissioner of Internal Revenue. Such statement shall be signed by the officer rendering the same, and be verified by his oath or affirmation to the effect that the same is a true and correct statement of all the taxes withheld by him for the preceding month, with the names and official designations of all the persons from whom said tax was withheld, and that said tax has been paid by him to a collector or deputy collector of internal revenue, giving the name of said collector or deputy and the district in which such payment was made.

VI.

APPEALS ALLOWED IN CERTAIN CASES.

Under the provisions of section 29 of said Act, any person, corporation, company, or association feeling aggrieved by the decision of the deputy collector, in cases where he has increased the list or return of such person, corporation, company, or association, or has refused to accept the declaration of any person, corporation, company, or association that he, or it, has been assessed and has paid an income tax elsewhere in the same year, or that he, or it, or any ward, had not a taxable income for said year, or where any deputy collector has made the annual list or return for such person, corporation, company, or association, and has added the penalty prescribed by law thereto, may appeal to the collector of the district, and his decision thereon, unless reversed by the Commissioner of Internal Revenue, shall be final.

This appeal must be claimed of the deputy collector by giving him notice thereof within five days after his decision is rendered, and a written statement of the grounds of appeal, verified by oath of the appellant, must be filed with the collector to whom such appeal is taken within ten days of the time it was claimed, unless special reasons made under oath are shown, where such statement could not have been filed in that time. Of the sufficiency of these reasons the collector is to be the judge.

Whenever such valid reasons exist, the written statement herein required must be filed at the earliest practicable time, not exceeding thirty days from the decision of the deputy collector.

If any person, corporation, company, or association is dissatisfied with the decision of the collector, he or it may submit the case with all the papers to the Commissioner of Internal Revenue for his decision, and may furnish the tes-

timony of witnesses to prove any relevant facts, having served notice to that effect upon the Commissioner of Internal Revenue.

In such cases the appellant shall serve the notice of appeal upon the collector who rendered the decision, and forward a copy of such notice with the certificate of service thereof to the Commissioner of Internal Revenue within five days from the date of such decision.

It shall be the duty of the collector, upon receiving the notice herein prescribed, to forward within five days thereafter all returns and other papers connected with said case to the Commissioner of Internal Revenue.

The notice to take depositions, required by said act to be served upon the Commissioner of Internal Revenue, shall accompany the notice of appeal, and shall state the time and place at which, and the officer before whom the testimony will be taken, the name, age, residence, and business of the proposed witness, with the questions to be propounded to the witness, or a brief statement of the substance of the testimony he is expected to give.

The Government, by the collector or any other officer or person designated by the Commissioner of Internal Revenue, may, at the same time and place, take testimony to rebut the testimony of the witnesses examined by the appellant. The notice to take testimony shall be delivered or mailed to the Commissioner of Internal Revenue a sufficient number of days previous to the date fixed for taking the deposition to allow him, after its receipt, at least five days, exclusive of the period required for mail communication with the place at which the testimony is to be taken, in which to give, should he so desire, instructions as to the cross-examination of the proposed witnesses.

The testimony or deposition shall be taken before a collector or deputy collector of internal revenue, unless it clearly appears from the statement of the appellant, under oath, that it is not practicable to take the same before such officer, and

reasonable notice shall be given to such collector or deputy collector of the time and place fixed for taking the deposition or testimony. The deposition or testimony aforesaid shall be securely sealed by the officer taking the same, and forwarded by mail to the Commissioner of Internal Revenue within five days after the close of the taking of such testimony or deposition.

VII.

PENALTY FOR MAKING KNOWN THE AMOUNT OR SOURCE OF INCOME.

Section 3167 of the Revised Statutes, as amended by this Act, provides that "it shall be unlawful for any collector, deputy collector, agent, or other officer or employee of the United States, to divulge or make known in any manner whatever not provided by law to any person the amount or source of income, profits, losses, expenditures, or any particular thereof set forth or disclosed in any income return by any person or corporation, or to permit any income return or copy thereof, or any book containing any abstract or particulars thereof, to be seen or examined by any person except as provided by law.

"It shall be unlawful for any person to print or publish in any manner whatever, not provided by law, any income return, or any part thereof, or the amount or sources of income, profits, losses, or expenditures appearing in any income return.

"Any offence against the foregoing provisions shall be a misdemeanor and be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employee of the United States, he shall be dismissed from office, and be incapable thereafter of holding any office under the Government."

Collectors are directed to call the attention of all officers and employees in their respective offices to this provision of the law, and to see that the same is carefully observed and rigidly enforced.

VIII.

TAXES DUE AND PAYABLE ON OR BEFORE JULY 1, IN EACH YEAR.

Section 30 of said Act provides that "taxes on incomes herein imposed shall be due and payable on or before the first day of July in each year, and on any sum or sums annually due and unpaid after the first day of July as aforesaid, and for ten days after notice and demand thereof by the collector, there shall be levied in addition thereto a sum of five per centum on the amount of taxes unpaid, and interest at the rate of one per centum per month on said tax from the time the same becomes due as a penalty, except on the estates of deceased, insane, or insolvent persons."

The notice and demand above mentioned will be given by the collector on Form 17, and the collector will observe care in serving all notices under the provisions of this Act, that the lien may be perfected against the party liable, with interest, penalties, and costs, as provided by section 3186 of the Revised Statutes, as amended. The service of notice on the taxpayer, if not present, may be made by leaving the same at his residence or place of business with some person of suitable age or discretion, or by mailing, in which last case the service will be held to have been made on the day when the notice would have reached the taxpayer in due course of mail.

The payment of all taxes on gains, profits, or incomes for persons or corporations, when delinquent, will be enforced as in the case of the enforcement and collection of other taxes

under the internal-revenue laws of the United States. (See sections 3187 to 3219, Revised Statutes.)

RECEIPTS TO BE GIVEN BY THE COLLECTOR.

It is made the duty, under section 37 of this Act, of every collector of internal revenue to whom any payment of income taxes is made to give the person making such payment a full written or printed receipt, expressing the amount paid and the particular account for which such payment was made. The receipt herein provided for shall be given on Form No. 1, Revised.

Collectors should set apart separate books of Form No. 1 for receipts for income taxes, that the stubs of said books when forwarded to the Commissioner of Internal Revenue may refer only to receipts given for this character of taxes.

Whenever payment of taxes is made such collector shall, if required, give a separate receipt for each tax paid by any debtor on account of payments made to or to be made by him to separate creditors, in such form that such debtor can conveniently produce the same separately to his several creditors in satisfaction of their respective demands to the amounts specified in such receipts.

Separate receipts may be given to guardians, trustees, agents, or other persons acting in any fiduciary capacity, for each of the wards, principals, or beneficiaries for which such guardian or other person may be acting.

IX.

INSTRUCTIONS RELATIVE TO ASSESSMENT LISTS, FORM 367.

On or before the 15th day of March in each year, the collector will prepare an assessment list for his entire district

covering all income taxes for the next preceding calendar year. This list will be on Form 367, and in triplicate, and will be in pamphlet form, as in the case of lists on Forms 23 A and 23 B.

He will first enter the names of all persons liable to an income tax for the year, and will then enter the names of all corporations, companies, and associations so liable, all in alphabetical order, space being left after each group of names commencing with a certain letter for entering the names of other persons or corporations, as the case may be, whose returns may be expected before the list is forwarded as hereinafter provided.

The collector will enter the amounts returned on Forms 365 and 366 to his deputies, as well as those made directly to himself, and all income taxes ascertained otherwise. In each case every fact necessary to enable the Commissioner to assess and determine the amount to be collected should be specified in the proper columns, including columns 9 and 10, and in the space headed "Remarks by the collector."

Each triplicate list will be a counterpart of the other two, except that the collector will mark across the top of one, in red ink, the word "Original," across the top of another the word "Duplicate," and across the top of the third the word "Triplicate."

Before sending the list to the Commissioner, the collector will make the entries on Form 367 in columns 2, 3, 4, 5, 6, 7, 8, 9, and 10, and in case the tax to be assessed is paid before the list is sent, in columns 16 and 17, as follows:—

(1) Care should be taken that entries made on any one line of the original should be made on the corresponding line of the duplicate and triplicate.

(2) The collector will enter in column 2 the names of all persons, corporations, companies, and associations in his district liable to assessment of an income tax, including those liable to the penalty of fifty per cent for neglect to make

return in due time, or of one hundred per cent for making a false or fraudulent return.

(3) In giving the post office address it is not necessary to state the county or township, but merely the post-office as found in the post-office directory, except in case the collection district is comprised, wholly or in part, within the limits of a city, when the street and number will be given in lieu of, or with, the post-office address.

(4) The calendar year 1894, or as the case may be for which the return is made, will be stated in figures in column 4. In order, however, that the character of the return may be more clearly identified, the collector will write in red ink across the top of the page upon which he begins the list of taxpayers who return on Form 365 the words "Personal income taxes," and also in red ink across the top of the page on which he begins the list of those who make returns on Form 366 the words "Income taxes of corporations, associations, and companies."

(5) In column 5 will be shown the gross amount of the income for the year as shown by Forms 365 or 366, or, in the absence of these returns, as ascertained in the manner provided by law and the regulations of this Department.

(6) In column 6 will be stated the aggregate of the deductions from the gross income authorized by law, and as set forth in the returns, Forms 365 and 366.

(7) In column 7 will be stated the net income for the year; that is to say, the taxable income which is ascertained by taking the amounts reported in column 6 from the amounts reported in column 5.

(8) In column 8 will be entered the amount of tax at two per cent computed on the net income reported in column 7.

(9) In column 9 the collector will state the date of the return on Form 365 or 366, as the case may be, and whether true or false. He may use the letter "T" to indicate that the return is true, and the letter "F" that it is false.

If the return is false, he will also state in what its falsity

consists. As the assessment of the penalty of one hundred per cent added to the amount of the tax ascertained to be due is to be made in all cases of a wilfully false or fraudulent list or return, it is necessary that the Commissioner should be correctly informed on this point.

If the return is received after the first Monday in March the collector will state whether he has allowed further time on account of sickness or absence, and if so, for how many days, and whether for sickness or for absence.

Letters containing explanations concerning items reported for assessment should be enclosed with the list on which the items are reported, and reference should be made to such letters under the heading "Remarks by collectors"; otherwise the explanations may not be received until after the list is made up and the "Original" forwarded to the collector.

The three copies of Form 367, prepared as above stated, will be disposed of as follows: two copies, the "Original" and "Duplicate," will, on or before April 15 following, be sent to the Commissioner of Internal Revenue with the returns on Forms 365 and 366 received by the collector from each person, corporation, and company reported on the list. The other copy of the list, the "Triplicate," will be filed in the office of the collector.

On the first day of May following, and on the first day of every succeeding month, the collector will forward a list on Form 368 of all delinquent income taxpayers against whom liability to tax is determined subsequently to the forwarding of the next preceding list, as also additional ascertained liabilities against those who may have been reported on any previous list.

The lists forwarded on the 15th day of April each year will be known as Annual Lists, and will contain the names only of those persons, corporations, companies, and associations liable to income tax for the calendar year next preceding. The Annual List to be forwarded April 15, 1895, will be designated as "The income tax list for 1894 for the district of

"Alabama," or for any other district, as the case may be, the list to be forwarded April 15, 1896, to be for 1895, and so on.

The Commissioner will, immediately upon receipt of the lists on Form 367 from the collector, inquire, determine, assess, and enter in columns 11, 12, 13, and 14 thereof, the amounts ascertained to be assessable, including the amounts returned by the collector, if found correct. He will then enter the total of column 14 of the list for each district, respectively, at the foot of column 10 of the proper list on Form 23, specifying on the same line the list on Form 367, from which the amount is transferred, the amount so entered to be included in the receipt, Form 23 $\frac{1}{2}$, for the list to which the transfer is made.

It is intended that the amounts on the income tax list for 1894 shall be included in the receipt, Form 23 $\frac{1}{2}$, for the month of May, 1895, which will be forwarded to the collector about June 15, 1895, and that the receipts, including the amounts assessed on the monthly lists on Form 368, will be forwarded with the lists, Forms 23 and 368, monthly, as heretofore in the case of Form 23.

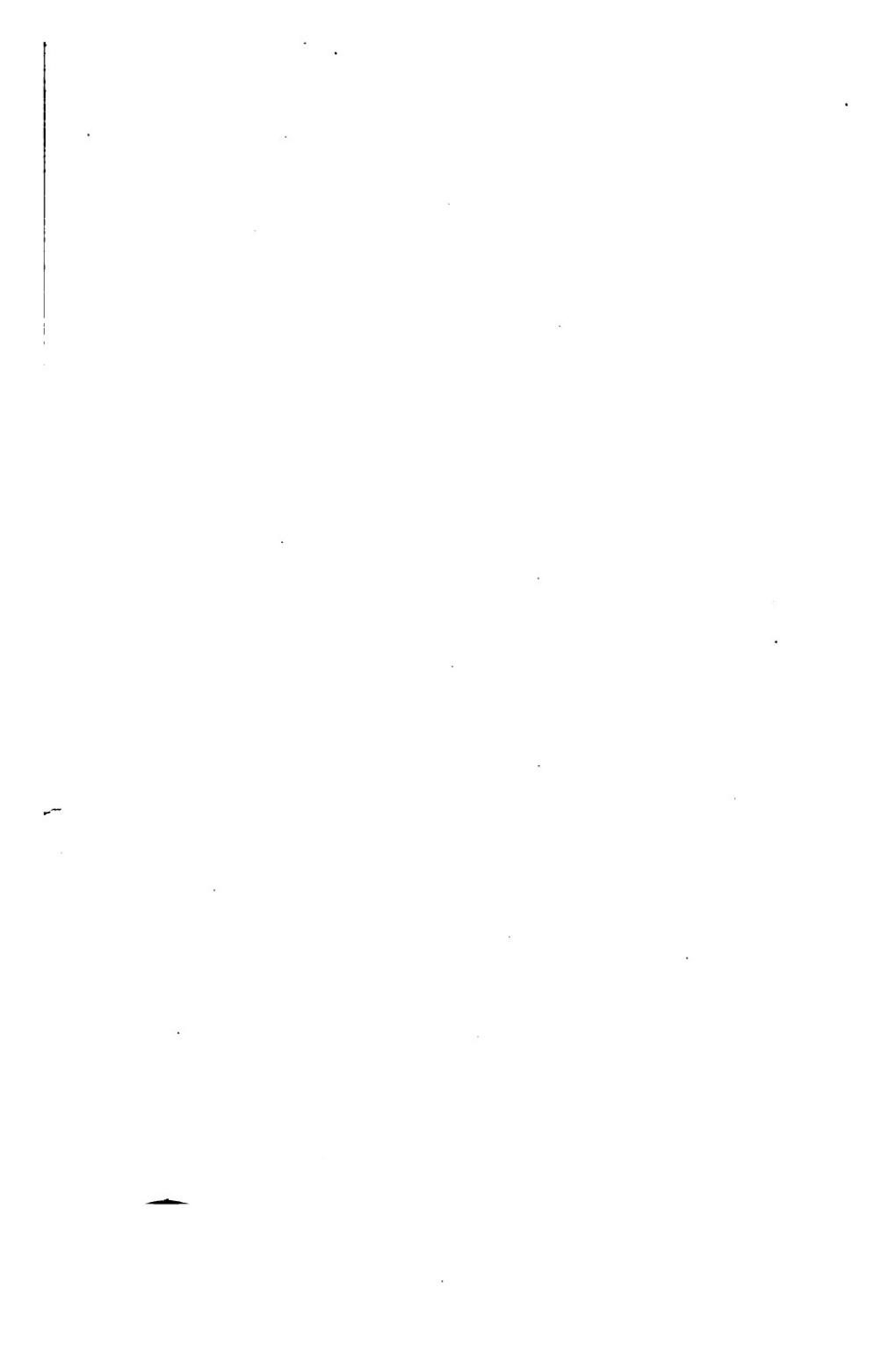
**MONTHLY REPORT OF ASSESSED INCOME TAXES ON
FORM 368.**

Each collector who receives a list on Form 367 will make a report thereof monthly until the assessment is disposed of by payment or abatement; such report to be made on Form 368, in accordance with the instructions printed on said form.

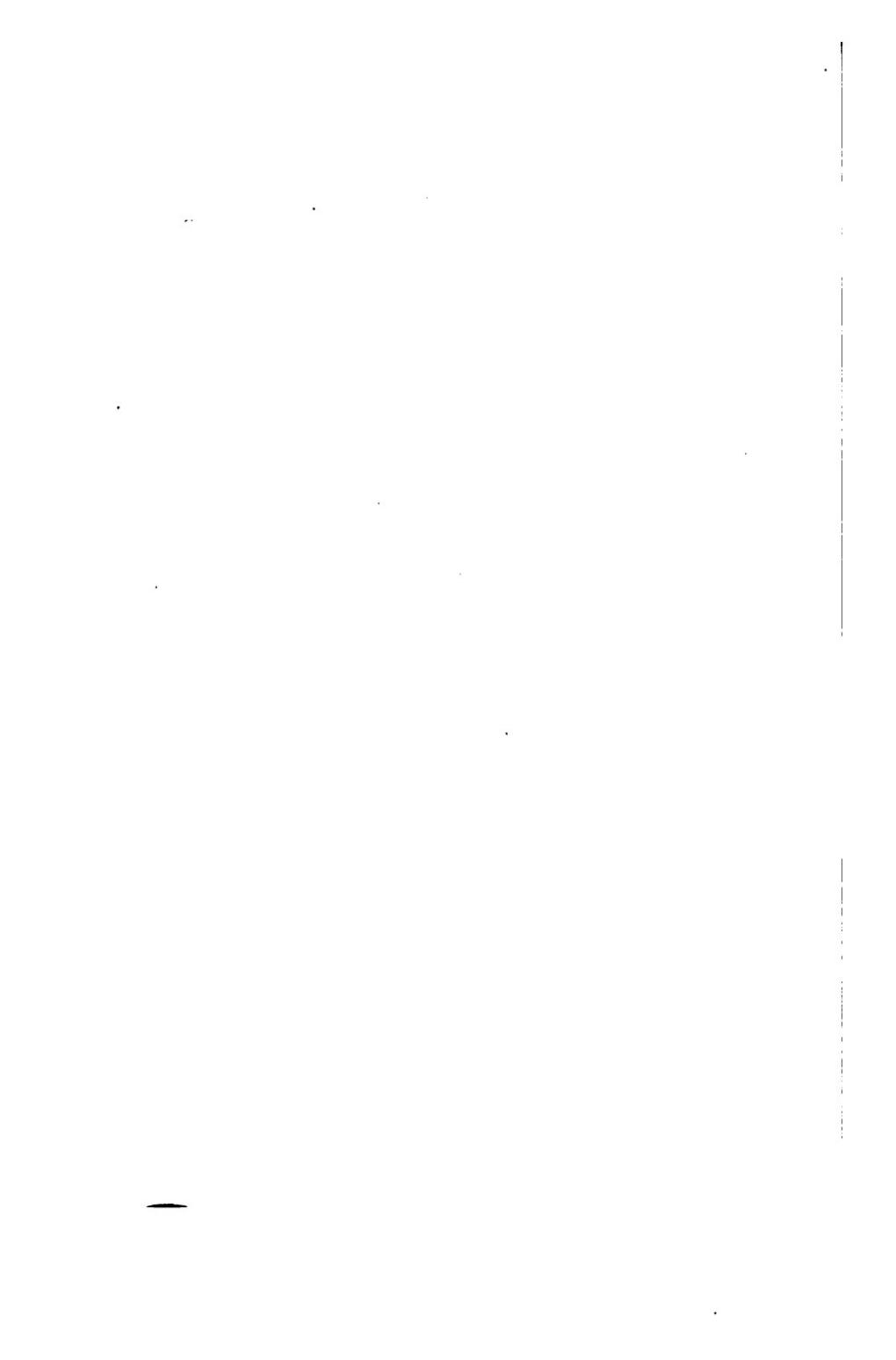
Jos. S. MILLER,
Commissioner of Internal Revenue.

Approved.

J. G. CARLISLE,
Secretary of the Treasury.



I N D E X.



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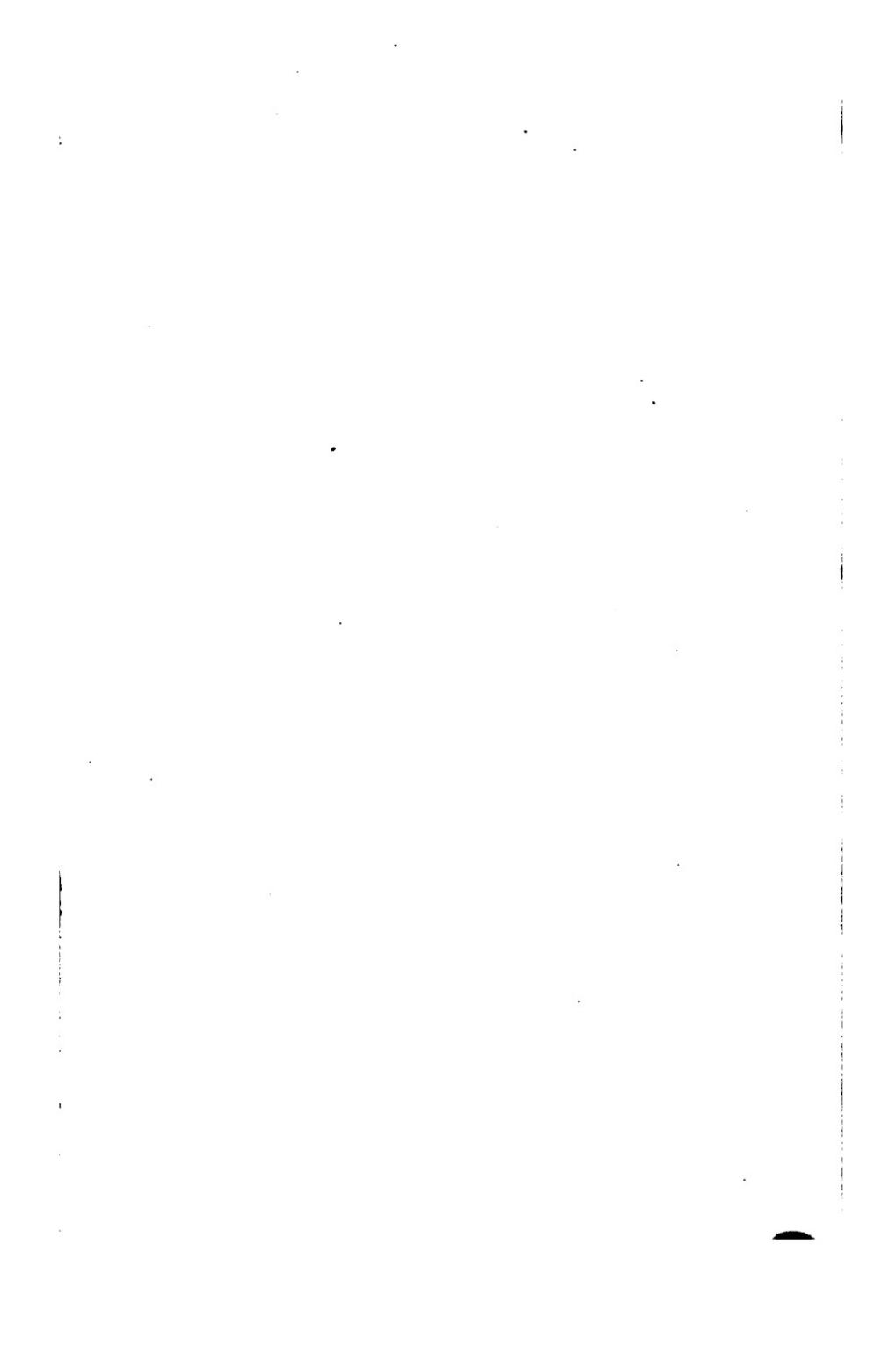
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